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 7 INTEGRITY AUTOMATED SOLUTIONS

8

9 **UNITED STATES FEDERAL DISTRICT COURT**

10 **CENTRAL DISTRICT OF CALIFORNIA**

11	MARK FULTON, dba as )	Case No.: 8:15-cv-00978-CJC-AGR
12	INTEGRITY AUTOMATED )	<b>SECOND AMENDED COMPLAINT FOR</b>
13	SOLUTIONS, )	<b>DAMAGES AND DECLARATORY JUDGMENT</b>
14	Plaintiff, )	<b>OF PATENT INVALIDITY AND</b>
15	)	<b>UNENFORCEABILITY</b>
16	vs. )	<b>1. CONVERSION;</b>
17	KEITH VOYSEY, Chief )	<b>2. TRESPASS TO CHATTELS;</b>
18	Technology Officer, GENEVA )	<b>3. IMPLIED CONTRACT AND QUANTUM</b>
19	ENERGY PARTNERS, INC., a )	<b>MERUIT</b>
20	California Corporation, , )	<b>4. INTENTIONAL</b>
21	DAVID BALKIN, position )	<b>MISREPRESENTATION;</b>
22	unknown, CHRIS TAYLOR, )	<b>5. FRAUDULENT</b>
23	position unknown, and DOES 1 )	<b>MISREPRESENTATION;</b>
24	through 50, inclusive, )	<b>6. INTENTIONAL INTERFERENCE WITH</b>
25	)	<b>ECONOMIC RELATIONSHIPS;</b>
26	Defendants )	<b>7. NEGLIGENT INTERFERENCE WITH</b>
27	)	<b>ECONOMIC RELATIONSHIPS;</b>
28	)	<b>8. TRADE LIBEL;</b>
		<b>9. UNFAIR COMPETITION California</b>
		<b>10. Business &amp; Professions Code § 17200.</b>
		<b>11. BUSINESS DEFAMATION</b>
		<b>12. DECLARATORY RELIEF OF PATENT</b>
		<b>INVALIDITY (Counts 11 through 17)</b>
		<b>DEMAND FOR A JURY TRIAL</b>

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1 Plaintiff MARK FULTON, dba INTEGRITY AUTOMATED SOLUTIONS  
 2 [FULTON] brings this SECOND AMENDED COMPLAINT [SAC] for a determination of  
 3 patent invalidity, California State Law claims, and further relief for declaratory judgment of  
 4 patent invalidity and unenforceability against KEITH VOYSEY [VOYSEY], Chief  
 5 Technology Officer of Genea Energy Partners, Inc., Genea Entergy Partners, Inc. [GENEA or  
 6 Genea], a California Corporation, DAVID BALKIN [BALKIN], position unknown, and  
 7 CHRIS TAYLOR [TAYLOR], position unknown.

8 This SAC contains facts and law not considered in Plaintiff's first federal actions, as  
 9 presented and discussed below. Plaintiff alleges the following based on information and  
 10 belief:

11 **I. JURISDICTION AND VENUE**

12 **A. Federal Question Jurisdiction Under 35 U.S.C. § 1 *et seq.***

- 13 1) The subject of this action is GENEA's patent, United States Patent No. 7,774,245  
 14 ['245 Patent].
- 15 2) This is an action for declaratory judgment of invalidity and non-infringement by  
 16 Plaintiff FULTON of the claims of GENEA's '245 Patent arising under the United States  
 17 Patent Laws, 35 U.S.C. § 1 *et seq.*
- 18 3) Federal Question jurisdiction is proper in this civil action because FULTON's claims  
 19 of patent invalidity arise under the Patent Laws of the United States, 28 U.S.C. §1338(a) and  
 20 the **America Invents Act [AIA]**, Pub. L. No. 112-29.
- 21 4) This civil action also invokes the **Declaratory Judgment Act**, 28 U.S.C. §§ 2201 &  
 22 2202 to seek a declaration of non-infringement by the FULTON on any of Genea's  
 23 intellectual property including, but not limited to, other patents, trademarks, copyrights and  
 24 trade secrets.
- 25 5) There is an actual controversy between FULTON and GENEA relating to GENEA's  
 26 '245 Patent and its intellectual property, in that GENEA threatened legal action against  
 27 FULTON for infringement of GENEA's '245 Patent and other intellectual property  
 28

[GENEA's IP or IP] through the WEBSMARTAIR technology platform [WSA]. Although GENE A issued a covenant to not sue FULTON for infringement of the '245 Patent for present versions of WSA, nonetheless, FULTON thereafter continued to suffer irreparable harm to his business and continues to suffer such harm after GENE A refused to withdraw its C&D Letter.

6) FULTON maintains that as a direct and proximate results of GENE A's failure to either explain its allegations of infringement or withdraw its C&D Letter, he suffered and continues to suffer irreparable harm to his business based on WSA, whereas GENE A asserts that its mere covenant to not sue FULTON for infringing on its '245 Patent absolves it of responsibility for sending a cease and desist letter [C&D Letter] without performing or providing an adequate claims infringement analysis.

7) This Federal Court has exclusive original subject jurisdiction over Plaintiff's claims of patent invalidity and unenforceability pursuant to federal question jurisdiction, 28 U.S.C. §§ 1331, 1338(a), the Declaratory Judgment Act, 28 U.S.C. § 2201-02, and the Patent Laws of the United States, 35 U.S.C. §§ 1 *et seq.*

#### **B. Supplement Federal Jurisdiction Under 28 U.S.C. § 1367.**

8) This Federal Court has supplement jurisdiction over Plaintiff's California State law claims pursuant to 28 U.S.C. § 1367 because said claims are so related to claims of patent ineligibility, invalidity, and unenforceability that they form part of the same case or controversy under Article III of the United States Constitution.

9) California State courts cannot exercise any "jurisdiction over any claim for relief arising from any Act of Congress relating to patents, plant variety protection, or copyrights." 28 U.S.C. §1338(a).

#### **C. Personal Jurisdiction.**

10) This court has personal jurisdiction over Defendants VOYSEY, BALKIN, TAYLOR, and GENE A because each Defendant resides in or does business or has minimal contacts with this Judicial District.

1                   **D. Venue.**

2                   11)   Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) & (c) because  
 3                   Defendants VOYSEY, BALKIN, TAYLOR, and GENEVA reside, do business or have their  
 4                   principle place of business in this Judicial District.

5                   **II. INTRODUCTION: PATENTEES MUST CONDUCT AN ADEQUATE**  
 6                   **CLAIMS INFRINGEMENT ANALYSIS, AND MUST ALSO INCLUDE A**  
 7                   **DESCRIPTION OF INFRINGING CONDUCT, BEFORE SENDING A**  
 8                   **CEASE AND DESIST LETTER TO SUSPECTED INFRINGERS.**

9                   12)   The principles at stake in this litigation implicate how a patentee should deal with a  
 10                  suspected infringer. Since GENEVA failed to include any description of any infringing activity  
 11                  in its cease and desist letter [C&D Letter] to Plaintiff, GENEVA exhibited bad faith. And  
 12                  because even a good faith belief in the invalidity of a patent is not a defense against willful  
 13                  infringement, FULTON had to act by conducting his own investigation of infringement. So  
 14                  FULTON inquired of GENEVA about the basis of its allegations of infringement. Under the  
 15                  circumstances, clearly FULTON could not merely deny infringement. So that GENEVA  
 16                  ultimate refusals and failures to provide any form of a claims infringement analysis  
 17                  demonstrates both objective and subjective bad faith.

18                  13)   Basically, GENEVA either did not conduct a claims infringement analysis or it  
 19                  performed an inadequate one before sending its C&D Letter. In either case, it already had  
 20                  sufficient information to know whether WSA infringed on the '245 Patent through two  
 21                  inspections, *i.e.* a secret inspection conducted in 2008 [SECRET INSPECTION] and an  
 22                  internet inspection [INTERNET INSPECTION] conducted around 2010. In addition, all of  
 23                  the information needed to learn the functionality and workings of the WSA technology were  
 24                  freely available on the WEB (currently [www.matter-systems.com](http://www.matter-systems.com)). Based on what GENEVA  
 25                  knew or should have known from its prior inspections and the information freely available  
 26                  from the Internet, GENEVA could not have had a reasonable basis for believing that it could  
 27                  prevail in any patent infringement lawsuit.

1 14) What patentees should not do, as GENEVA did, is send a cease and desist letter without  
2 comparing the claims of the patent, *i.e.* the '245 Patent, along with the functionality and  
3 features of the suspected infringing product, *i.e.* WSA. The absence of such a comparison in  
4 the C&D Letter indicates that GENEVA did not have sufficient infringement information to  
5 provide details of infringement. The cause of not having sufficient infringement information  
6 was failing to perform an adequate claims infringement analysis. A reasonable jury could  
7 conclude that GENEVA's ultimate failure to provide any form of claims infringement analysis  
8 demonstrates a lack of good faith and informed comparison of the claims of the '245 Patent  
9 and the features of the WSA technology. A reasonable jury could also conclude that GENEVA  
10 filed to perform reasonable preparation, and that this lack of preparation gave no reasonably  
11 objective assurance to GENEVA that it could prevail in any infringement lawsuit.

12 15) Nor should patentees send a C&D Letter threatening litigation if it has no intent to sue  
13 for infringement. Based on the facts that GENEVA failed to assert claims for infringement at  
14 least twice when it had the opportunity to do so, a reasonable jury could conclude that  
15 GENEVA never intended to sue for infringement. Sending a letter threatening litigation with  
16 no intention of following through could be construed by a reasonable fact finder as a lack of  
17 good faith in sending the letter.

19 16) Probably expecting compliance with its demands to stop using and developing WSA  
20 technology, and instead facing litigation against a non-compliant competitor who refused to  
21 acquiesce to GENEVA's unilateral demands, GENEVA then demanded an inspection of WSA  
22 through discovery. However, since GENEVA never before requested an inspection of WSA  
23 before, even during extensive pre-litigation negotiations, a reasonable jury could conclude  
24 that GENEVA had all of the information it believed necessary to allege infringement and that  
25 its inspection request was just a sham to cover up its failure to perform a claims infringement  
26 analysis.

27 17) In the end, there is no evidence that GENEVA ever compared the claims of the '245  
28 Patent and the features of WSA technology, even after its third inspection of WSA during

1 discovery in the First Federal Action. In addition, the lack of any description of any  
2 infringing conduct by WSA in the C&D Letter is adequate evidence to infer that GENEVA  
3 conducted no pre-letter investigation comparing the claims of the '245 Patent with WSA  
4 technology. There is little or no evidence that a reasonably qualified software engineer  
5 evaluated a comparison of the claims in the '245 Patent with the functionality of the WSA  
6 technology. GENEVA claims that it performed a careful investigation and analysis, but there is  
7 little or no evidence that its patent counsel did so. A reasonable jury could conclude that  
8 GENEVA's failures to produce any claims infringement analysis conducted before sending its  
9 C&D Letter was the result of bad faith.

10 18) And from GENEVA's refusals and failures to provide any claims infringement analysis  
11 during litigation, a reasonable jury could conclude that none was performed before sending its  
12 letter and that GENEVA sent its C&D Letter maliciously.

13 19) During prior litigation, GENEVA was faced with a golden opportunity to sue for  
14 infringement on its '245 Patent--but curiously, it did not. Instead of withdrawing its C&D  
15 Letter when FULTON noted to John Guist, GENEVA's then patent counsel, that WSA could  
16 not possibly infringe on GENEVA's '245 Patent since WSA did not use metered energy usage  
17 data, GENEVA stubbornly refused to reconsider its allegations of infringement. Incorrectly,  
18 GENEVA stated that it was FULTON's burden of proof to prove non-infringement, whereas as  
19 a matter of law the patentee always bears the burden of proving infringement. The burden of  
20 proof does not shift from the defendant patentee in an action for declaratory relief. A  
21 reasonable inference could be made by a jury that such obstinacy constitutes abuse of  
22 process and subject bad faith.

23 20) In its original answer in the FIRST FEDERAL ACTION, GENEVA refused or failed to  
24 allege any counter-claims that WSA infringed on its '245 Patent, which under the **Federal**  
25 **Rules of Civil Procedure** are compulsory and waived if not made then. From this first  
26 reluctance to assert claims of infringement, a reasonable jury could conclude that GENEVA  
27  
28

1 never intended to sue for infringement and that its threats of litigation in the C&D Letter were  
2 mere bad faith imitations of overbearing intimidation.

3 21) Subsequently, GENEVA had a second chance to assert claims of infringement, but  
4 again it decided not to. In the prior litigation, GENEVA obtained leave from the court to file an  
5 amended answer in order to assert counter-claims for infringement on the '245 Patent. By this  
6 time, FULTON had expended much energy in seeking information on infringement from  
7 GENEVA, to no avail. By then he had also spent considerable resources on litigation to  
8 somehow resolve GENEVA's unsubstantiated claims of infringement. But then, in the event,  
9 GENEVA decided to not file any amended answer at all, thus causing much waste of  
10 FULTON's efforts and resources. From this second failure to assert claims of infringement, a  
11 reasonable jury could conclude that GENEVA never, ever intended to sue FULTON for patent  
12 infringement and that GENEVA's threats of litigation in its C&D Letter were maliciously  
13 motivated in bad faith.

14 22) Instead of counter-claiming for infringement, which would have forced GENEVA to  
15 eventually produce a claims infringement analysis and engage in discovery which in all  
16 probability would have revealed that it conducted none before sending its C&D Letter,  
17 GENEVA issued a covenant to not sue in order to avoid a determination that its '245 Patent was  
18 invalid and unenforceable. While GENEVA could argue that it issued this covenant in order to  
19 avoid further litigation, a reasonable jury could instead conclude that GENEVA had waited  
20 until the very last minute to make its promise merely in order to cause the most financial  
21 hardship and business turmoil on FULTON.

22 23) But there are yet other reasons that motivated GENEVA to terminate the prior litigation  
23 without any review on the merits, *i.e.* to obscure its own inequitable conduct and avoid a  
24 determination of the invalidity of the '245 Patent on the merits. While GENEVA could argue  
25 that it did not have sufficient information to actually allege infringement its original answer  
26 and that it therefore needed to inspect WSA before doing so, the evidence of its prior  
27

1 inspections of WSA indicates that it did have sufficient information, or so a reasonable jury  
2 could so conclude.

3 24) And the fact that GENEVA did not cite WSA as prior art in its application for the '245  
4 Patent could be construed by a reasonable jury as an inequitable attempt by GENEVA to hide  
5 the WSA technology, which renders the claims of GENEVA's '245 Patent obvious, from the  
6 United States Patent and Trademark Office [USPTO]. Factual and legal research subsequent  
7 to the First Federal Action has revealed facts and circumstances that merit a determination of  
8 the validity of the '245 Patent on its merits.

9 25) Due to GENEVA's refusal to provide a claims infringement analysis to FULTON,  
10 FULTON has been forced to shut down his business based on WSA. But FULTON cannot  
11 just wait things out because of the overhanging threat of ruinous liability for willful  
12 infringement, especially since even a good faith belief in the invalidity of a patent is no  
13 defense to willful infringement. So FULTON asks GENEVA to explain their allegations of  
14 infringement and wrongful impact on GENEVA's IP. GENEVA does not respond and refuses to  
15 provide any information regarding alleged infringement. A reasonable jury could conclude  
16 that GENEVA suppressed infringement information in bad faith.

17 26) GENEVA then misleads FULTON by promising to provide a claims infringement  
18 analysis, but then fails to produce any. A reasonable jury could infer from this that GENEVA  
19 had fraudulent intent by promising to produce, but then failing to deliver, information on  
20 infringement.

21 27) FULTON had developed a business managing energy consumption in commercial  
22 buildings using the WSA technology platform. But now FULTON cannot use the WSA  
23 platform because of the lingering effects of GENEVA's C&D Letter which made false and  
24 unsubstantiated allegations of infringement on the '245 Patent and wrongful impact on  
25 GENEVA's IP.

26 28) FULTON's customers reasonably decided to not buy into litigation. GENEVA's  
27 actions are the epitome of what a patent troll does, which is merely collect patents and

1 royalties without actually making anything or developing any legitimate business. In fact,  
2 GENE A does not appear to be even using the invention described in the claims of its '245  
3 Patent at all. At least, from the removal of all discussion of patents from its Website,  
4 including no mention of the '245 Patent at all, a reasonable jury could conclude that GENE A  
5 never used or implemented its own patent.

6 29) In sum, GENE A obtained its '245 Patent only because it failed to cite WSA as prior  
7 art in its patent application at the USPTO. A reasonable examiner would want to know of  
8 WSA as a prior art reference for the claims of the '245 Patent because seeing the WSA  
9 technology would make the claims of the '245 Patent obvious. A reasonable jury could  
10 conclude from this failure to cite known prior art that GENE A succeeded in committing fraud  
11 on the USPTO.

12 30) In conclusion, GENEA's only use of its patent at issue here is to shut down small  
13 competitors such as Plaintiff FULTON.

### 15 III. THE PARTIES

#### 16 A. Plaintiffs

17 31) Plaintiff FULTON is a California resident with his principal place of business at 2500  
18 E. Imperial Highway, #201-313, Brea, California. FULTON is in the building management  
19 business and sells systems using WSA.

#### 20 B. Defendants

21 32) Defendant GENE A is a California Corporation with its principle place of business at  
22 23691 Del Rio, Yorba Linda, County of Orange, California.

23 33) Defendant VOYSEY is the Chief Technology Offer of GENE A and named inventor  
24 of the '245 Patent. GENE A employs more than 100 people and has revenues exceeding \$8–  
25 10 million annually. VOYSEY claims to be the CEO of Genea. He sold interests in GENE A  
26 and valued these interests based obtaining and enforcing patents in the energy management  
27 field. VOYSEY seeks to demonstrate the enforceability of his patents in order to justify the  
28

1 valuation of his companies. Defendants BALKIN and TAYLOR work at Genea and were  
2 CC'd in GENEA's C & D Letter.

3 34) The true names and capacities of the Defendants DOES 1 through 50, whether  
4 individual, corporate, associate or otherwise, are unknown to Plaintiff at the time of filing this  
5 Complaint and Plaintiff, therefore, sues said Defendants by such fictitious names and will ask  
6 leave of Court to amend this Complaint to show their true names or capacities when the same  
7 have been ascertained. Plaintiff is informed and believes, and thereupon alleges, that each of  
8 the DOE Defendants is, in some manner, responsible for the events and happenings herein set  
9 forth and proximately caused injury and damages to the Plaintiff as herein alleged.

10

11 **IV. BUSINESS OF THE PARTIES.**

12 **A. GENEA Energy Partners, Inc.**

13 35) Competitors in the marketplace where GENEA and FULTON do business owe duties  
14 to each other to not make unsupported or unjustified allegations of impact or infringement on  
15 their intellectual property. Once allegations of patent infringement are made, the accused  
16 infringer must take steps to avoid willful infringement. GENEA violated this duty by making  
17 false allegations that FULTON and WSA infringed on GENEA's '245 Patent. However,  
18 GENEA's C&D Letter failed to include any description of infringing conduct. A reasonable  
19 jury could conclude from this that GENEA was either careless or reckless.

20 36) Without any information which he could use to modify WSA systems in order to  
21 avoid willful infringement, FULTON's business based on WSA continued to decline even  
22 after GENEA promised in December 2013 to not sue for infringement of the '245 Patent for  
23 present versions of WSA.

24 37) FULTON and GENEA compete domestically and internationally in building  
25 management. GENEA has advertised on its website that several patents, including the '245  
26 Patent. Because of the results in the first phase of this litigation in Federal Court, GENEA no  
27 longer advertises its patents on its website.

28 **B. Mark Fulton And Integrity Automated Solutions [IAS].**

1       37) WSA technology consists of a web and PC based software application installed on a  
2 computer that allows tenants to order air conditioning and lighting serviced in computer  
3 controlled buildings. The software generates an invoice for periods of requested service that  
4 are not covered by the lease hours. WSA does not use metered energy usage data.

5       38) During this time FULTON's WSA-based business growth has declined substantially  
6 because of the uncertainty of the threat of a lawsuit from Genea and their claims of patent  
7 infringement. By stopping further development of WSA, FULTON took the only reasonable  
8 step to avoid potentially devastating litigation and/or willful infringement.

9       39) FULTON is the owner and general manager of Integrity Automated Solutions [IAS], a  
10 growing company which he founded in 2004 and where he has full profit-loss responsibility.  
11 IAS has 21 employees in the following departments: Building Automation, Electrical  
12 Construction and Installation, and Heating Ventilation and Air Conditioning (HVAC). IAS  
13 has grown over the past eight (8) years to 2½ million in annual sales. Annual profits are  
14 approximately 12–15% percent of revenue.

15       40) IAS has developed a strong niche in the local Los Angeles market by offering non-  
16 proprietary systems for building automation systems. Typically, systems for managing  
17 energy usage in commercial buildings are first customized for one location and then adapted  
18 for other specific location. These systems are installed in a wide range of buildings, from a  
19 single building sites to multi-tower office complexes. Traditionally is was difficult or  
20 impossible to take one system installed at one location and move it to another without  
21 substantially changing it due to the need for detailed customization.

22       41) IAS has been installing an off-the-shelf system called WSA for more than five (5)  
23 years. IAS installed WSA in over 25 locations in several states and countries. IAS devoted  
24 over 2,000–2,500 man-hours during this time selling and promoting WSA. After recognizing  
25 the trend in the industry towards more “open” standardized applications, IAS achieved an  
26 industry leading position starting in 2010 in the growing trend towards off-the-shelf solutions.  
27 During a 3 year period IAS installed systems in four (4) of the largest high rise buildings in

1 downtown Los Angeles: AON Tower (707 Wilshire), Figueroa Tower (777 Figueroa), 1  
2 California Plaza 300 South Grand, and 800 West 6<sup>th</sup> Street.

3 42) IAS was an innovator in seeking to sell software-based energy management systems  
4 for commercial buildings through distributors on the internet. IAS has developed a stellar  
5 reputation for providing the low cost, open protocol solutions for their customers with  
6 excellent follow up service and support. Starting in January, 2012, after building a successful  
7 and consistent source of revenue and profits for IAS based on WSA, IAS was forced by  
8 GENEVA to shut down and severely restrict business activities. IAS had been invited to sell  
9 and had planned on selling six (6) systems to LBA Realty in Irvine, California [LBA]. LBA  
10 had potential for many more system installations, as they own and manage over 40 million  
11 feet of property in the southwest part of the United States. As a result of receiving GENEVA's  
12 C&D Letter and unresolved issues regarding infringement, the LBA project was awarded to  
13 GENEVA.

14 43) Beginning in March, 2012, IAS stopped further development of its WSA business  
15 because clients were reluctant to consider WSA systems due to the on-going threat of  
16 litigation from GENEVA. As a result of following the demands in the cease and desist letter to  
17 stop using and marketing WSA, FULTON completely backed away from several large  
18 projects, including the LBA Realty Project discussed above, and also stopped local marketing  
19 initiatives and regional sales campaigns in the Greater Los Angeles area. FULTON could not  
20 follow through with OEM marketing campaigns involving Delta Control, Reliable Controls,  
21 Distech Controls, and Andover as discussed above and his plans for international expansion  
22 into South America, Europe, China, Australia and Canada were terminated.

23 44) By 2014, GENEVA's refusal to withdraw its C&D Letter prevented IAS from resuming  
24 these marketing campaigns.

25 45) Since GENEVA refused to explain its allegations of infringement and further concealed  
26 its claims analysis, IAS could do nothing to prove that WSA did not infringe on the '245  
27 Patent. IAS took the only reasonable course of action when threatened by potentially ruinous

1 patent litigation and withdrew from the market. Clients and customers are still reluctant to  
2 consider installing WSA systems because GENEVA has not withdrawn its C&D Letter.

3 **D. Business Plans for WSA and IAS.**

4 46) FULTON had developed plans to pursue international markets *via* eBay, *e.g.* South  
5 America, Europe, *e.g.* Great Britain, France, and Germany, China, Australia, and Canada.  
6 But the continuing restraining effects of GENEVA's C & D Letter scuttled all plans for  
7 international expansion.

8 47) FULTON had a general sales and marketing plans to distribute WSA as an OEM  
9 product to several energy management systems manufacturers, none of whom then had an  
10 after-hours control system to offer their clientele. Plaintiffs were in direct talks and  
11 negotiations with Delta Controls ([deltacontrols.com/](http://deltacontrols.com/)), Reliable Controls  
12 ([reliablecontrols.com](http://reliablecontrols.com)), Distech Controls ([distech-controls.com](http://distech-controls.com)), and Andover Controls  
13 ([ftp.andovercontrols.com](http://ftp.andovercontrols.com)).

14 48) By 2011 FULTON was working on detailed plans to implement a long-term, strategic  
15 plan which was centered on using WSA. FULTON planned to implement a marketing  
16 strategy using the internet for Web-based marketing to small-to-medium sized buildings. The  
17 drop in prices for PCs to between \$300-\$400/unit opened up new markets for WSA. This  
18 pricing differential and the technical capabilities of WSA gave FULTON a valuable strategic  
19 advantage over their competitors.

21 49) FULTON's losses caused by GENEVA's C & D Letter did not occur immediately By  
22 2012 as a result of the unresolved issues of GENEVA's claims of patent infringement,  
23 FULTON had begun to losing substantial business. Beginning in March, 2012, IAS stopped  
24 further development of WSA business because clients were reluctant to consider WSA due to  
25 the threat of litigation from GENEVA.

26 50) Starting in mid-2012, GENEVA was on notice that FULTON was suffering damages,  
27 including but not limited to, business and financial losses and that Plaintiff exited or severely  
28 reduced their businesses as a result of the actions of GENEVA. FULTON was at that time

1 pursuing international markets in South America *via* eBay, including Europe (Great Britain,  
2 France, Germany, etc., China, Australia, and Canada. But the continuing effect of GENEVA's  
3 cease and desist letter put an early rest to any international expansion, even after GENEVA  
4 issued a covenant to not sue.

5) Annual revenue for IAS from the WSA platform for the past 5 years averaged  
6 between \$45,000-\$60,000. During the past two (2) years since mid-2012, ever since GENEVA  
7 sent its cease and desist letter on June 22, 2011, revenue from WSA has declined sharply.  
8 And as a consequence of receiving GENEVA's C&D Letter, IAS did not pursue sales  
9 opportunities and terminated significant domestic and international business expansion  
10 strategies and marketing initiatives.

11) Since mid-2012, FULTON was inhibited from actively selling WSA declined to  
12 pursue leads due to fear of litigation and the uncertainty generated by GENEVA's public and  
13 private claims of infringement. IAS removed WSA from marketing material and IAS's  
14 website at [www.iascontrols.net](http://www.iascontrols.net) and IAS also cut back on existing and on-going sales efforts  
15 that were in the pipeline for fear of reprisals from both GENEVA.

16) Even after GENEVA issued its Covenant to Not Sue in December, 2013, IAS cannot  
17 use WSA freely because of ongoing doubts about GENEVA's claims of infringement and  
18 wrongful impact on GENEVA's IP.

20 **V. EVENT SYNOPSIS.**

21 **A. GENEVA'S '245 Patent Issued by USPTO.**

22) GENEVA's '245 Patent was issued on August 10, 2010.

23) WSA is prior art to the '245 Patent.

24) GENEVA did not cite WSA as prior art in its patent application.

25 **B. GENEVA Knew the WSA Technology From Two Prior Inspections of  
26 WSA.**

1 57) In 2008 GENE A secretly inspected WSA at an installed site [SECRET  
2 INSPECTION]. To gain access, GENE A falsely stated that it had been authorized to conduct  
3 an inspection.

4 58) During 2010 GENE A inspected WSA through the internet [INTERNET  
5 INSPECTION]. This search made available all of the pages used by WSA.

6 59) Before sending its C & D Letter, GENE A had already gained full access to the WSA  
7 software and technology and learned its inner architecture. As a result, GENE A knew or  
8 should have known that WSA did not infringe on the claims of the '245 Patent.

9 60) GENE A had no reasonable belief that WSA infringed on its '245 Patent.

10 61) Based on its inspections, GENE A had sufficient facts to analyze the functionality of  
11 WSA and compare it to the claims of the '245 Patent. GENE A had sufficient information to  
12 conduct a claims infringement analysis without another inspection.

13 62) WSA does not use metered energy usage data. Plaintiffs informed GENE A that WSA  
14 does not use metered energy usage date prior to filing this action. But even when GENE A  
15 admitted, on or about December 2013, that WSA did not infringe on the '245 Patent, GENE A  
16 still refused to withdraw its C & D Letter. The C & D letter continues to cause business  
17 losses to FULTON.

18 63) GENE A knew or should have known that WSA did not use metered energy usage  
19 data and therefore did not infringe on any of the claims of the '245 Patent.

20 64) GENE A did not ask either FULTON or WSA's developer for information about or an  
21 inspection of WSA. Nor did GENE A seek any information on the features and functionality  
22 of WSA from either FULTON or its developer. FULTON has never been contacted by  
23 GENE A about any conflict between WSA and the '245 Patent. Nor has GENE A contacted  
24 either FULTON or the developer about any wrongful impact on intellectual property.

25 65) GENE A never provided FULTON with a claims or infringement analysis before or  
26 after sending its C & D Letter.

1       66) The C & D Letter does not describe any infringing conduct by WSA. Nor does it  
2 identify patent claims infringed. GENE A provided no information or data that would have  
3 assisted FULTON in avoiding willful infringement on Genea's '245 Patent

4       67) GENE A never identified any wrongful impact on Genea's intellectual property in its  
5 C&D Letter. GENE A never provided any information to FULTON on any wrongful impact  
6 on GENE A's IP.

7       68) GENE A never contacted FULTON about infringement on its '245 Patent or wrongful  
8 impact on its intellectual property because it already knew that there was no infringement or  
9 wrongful impact.

10      69) GENE A had no evidence that WSA infringed on the '245 Patent.

11      70) GENE A has no evidence that WSA wrongfully impacted GENE A's IP.

12      **C. Plaintiffs Asked GENE A To Explain Its Allegations of Patent Infringement  
13 and Wrongful Impact on Intellectual Property.**

14      71) WSA does not infringe on the '245 Patent or GENE A's intellectual property.

15      72) FULTON does not wrongfully impact any of GENE A's intellectual property.

16      73) The C & D Letter does not specify which claims of the '245 Patent were infringed.

17      74) When FULTON inquired about the details of GENE A's claims of infringement  
18 multiple times, GENE A had a duty to provide all necessary information and explanations so  
19 that Plaintiffs could avoid infringement, if any.

20      75) GENE A's attorney at Mintz Levin, John Guist [GUIST] regularly visited Plaintiffs'  
21 sales website (WSA.com). Downloadable files that show WSA invoicing using time-based  
22 billing. Every input and output page of the WSA system is displayed. No page uses or refers  
23 to using metered energy usage data.

24      **D. GENE A Sent a Cease and Desist Letter Knowing That WSA Did Not  
25 Infringe On the '245 Patent.**

26      76) In 2011, Genea sent a cease and desist letter [C & D Letter] to FULTON demanding  
27 that he stop using WSA and refrain from using any technology which "impacted Genea's  
28 intellectual property".

1       77) The effect of reading this letter was dreadful and unnerving to FULTON, especially  
2 since it came from the law offices of a prominent law firm, Mintz *et al.* in San Diego,  
3 California. Although the letter was threatening, it was also confusing because it did not  
4 identify which claims were being infringed upon nor how the infringement was occurring.

5       78) GENEVA did not provide a claims infringement analysis. GENEVA did not explain how  
6 WSA or any of Plaintiff's products or technology impacted GENEVA's IP.

7       79) GENEVA did not identify any of the patent's claims which were allegedly infringed  
8 upon.

9       80) Defendants VOYSEY, BALKIN, and TAYLOR were involved in writing and  
10 authorizing this C&D Letter. Specific allegation of their roles will be further pled when  
11 discovery is permitted.

12       81) GENEVA threatened to "take all appropriate legal action to protect its intellectual  
13 property, including its patent rights." GENEVA also demanded that Plaintiffs "confirm, within  
14 30 days, that you have ceased to market and sell WSA™, or have changed the product  
15 significantly so that it is not impacted by GENEVA's intellectual property" (emphasis added).

16       82) GENEVA advised FULTON that GENEVA "believes that this patent ['245 PATENT]  
17 impacts your present and/or future business with respect to this product (Web Smart Air™),  
18 and requests that you cease all efforts that may impact Geneva's intellectual property." (letter  
19 from John E. Guist to Mark Fulton and John Matter dated June 22, 2011) (emphasis added).

20       **E. GENEVA's Refusal To Describe Any Infringing Conduct Forced FULTON to  
21 Abandon WSA.**

22       83) As a direct consequence of GENEVA's direct request to stop conducting all business in  
23 competition with GENEVA, as well as its public accusations that WSA infringed on the '245  
24 Patent, FULTON was compelled to quit their businesses built around WSA systems, stop  
25 further development of WSA, and forced to abandon plans for future expansion and  
26 development internationally through eBay.

1       84) During 2012, in response to GENEVA's demands, Plaintiffs stopped further  
2 development and sales of WSA and curtailed important business development projects using  
3 WSA. Plaintiffs could not resume using or developing WSA business because GENEVA  
4 refused to provide any information on their allegations of infringement which would have  
5 enabled FULTON to avoid willful infringement on the '245 Patent and any wrongful impact  
6 on GENEVA's intellectual property.

7       85) FULTON reasonably calculated that, in the complete absence of infringement  
8 information from GENEVA, there was a great danger from potential liability from continuing  
9 willful infringement, if infringement were found.

10       86) FULTON reasonably calculated that any benefit from using or developing WSA any  
11 further was far outweighed by the potential liability stemming from GENEVA's allegations of  
12 infringement. As a result, FULTON lost substantial sales. FULTON reasonably concluded  
13 that leaving their clients and customers out of this patent dispute, by refraining from  
14 marketing, selling or further developing WSA business, was required due to GENEVA's  
15 allegations.

16       87) After January, 2012 customers and clients of FULTON started to decide not to  
17 purchase, use or continue to use the WSA technology as a direct and proximate result of  
18 GENEVA's allegations of infringement the '245 Patent. This trend continues as a direct and  
19 proximate result of GENEVA's refusal to withdraw its C&D Letter, even after admitting that  
20 there is no infringement or wrongful impact. FULTON notified GENEVA that he was losing  
21 business because of GENEVA's C&D Letter, to no avail.

23       **F. GENEVA Failed To Describe Infringing Conduct By WSA and Refused to  
24       Provide Any Information on its Allegations of Infringement.**

25       88) Defendants VOYSEY, BALKIN, and TAYLOR were involved in writing and  
26 authorizing this C&D Letter. GENEVA withheld information from the Plaintiffs regarding the  
27 impact on GENEVA's intellectual property. Because Plaintiff could not figure out how to do  
28 business without impacting GENEVA's intellectual property or violating their patents, Plaintiff

1 stopped using, accessing, and further developing WSA software and equipment. As a direct  
2 and proximate result of this reasonable decision, Plaintiff lost his business initiative and  
3 strategic technology position. In short, Plaintiff was forced to forgo expansion plans due  
4 solely to the unresolved issues raised by GENECA's C&D Letter and GENECA's refusal to  
5 explain its allegations of infringement.

6 89) GENECA's failure to compare WSA's functions with the '245 Patent claims was  
7 recklessly oppressive because GENECA subjected Plaintiffs to foreseeable and unjust hardship  
8 in the form of avoidable business losses and lost development time.

9 **G. GENECA's Failed To Conduct a Claims Infringement Analysis Before  
10 Sending Its Cease and Desist Letter.**

11 90) GENECA's failure to provide any justification or explanation of which products of  
12 FULTON wrongfully impacted Genea's intellectual property is despicable because  
13 reasonable people would expect that people making allegations of wrong doing must explain  
14 themselves.

15 91) The C & D Letter contained no explanation of GENECA's allegations of infringement,  
16 so that FULTON was unable to modify his use of WSA technology and business to avoid  
17 willful infringement.

18 92) Nor did the C & D Letter contain any claims infringement analysis, so that FULTON  
19 was unable to explain to potential clients and customers that there was no infringement.

20 93) The letter did not describe any infringing or impacting conduct on GENECA's  
21 intellectual property. Without any information on allegedly infringing conduct, FULTON  
22 was unable to fully use, access or further develop WSA systems and businesses since further  
23 use and development would have been destroyed or confiscated under the patent law if any  
24 infringement were found.

25 **H. GENECA Counsel John Guist Failed to Explain Allegations of  
26 Infringement.**

27 94) FULTON wrote to GENECA's counsel: "Given the serious nature of your client's  
28 assertions of infringement along with the paucity of supporting facts and argument, and the

1 fact that they are communicating such accusations to actual and potential customer of my  
 2 clients, all such activity must stop. In addition, unless recent claims of patent infringement  
 3 are further substantiated, my clients require a written acknowledgement that their product and  
 4 technology does not in any way infringe on your '245, your clients' sole patent, by August 10,  
 5 2011." Email from Richardson to Guist (dated July 23, 2011).

6 95) GUIST responded on July 26, 2011: "As I stated in my phone call, we believe that  
 7 Web Smart Air system sold by your clients infringes at least claims 1, 6, 7, 8, 10, 13, 16 and  
 8 17 of U.S. Patent No. 7,774,245. This is sufficient information to allow you to undertake  
 9 your own analysis, given that you have access to that system and how it operates. Therefore  
 10 we will not be providing our work product and we will not retract that claim unless you can  
 11 convince us that there is no infringement (emphasis added)." Merely identifying claims  
 12 without an explanation of infringing conduct is insufficient for the Plaintiffs to modify or  
 13 change WSA™ or their products and technology to avoid willful infringement and wrongful  
 14 impact.

15 96) GUIST went on further to say that: "Truth is an ultimate defense to defamation and  
 16 while we believe it to be the truth that your clients infringe we have not been able to uncover  
 17 any statements made by Genea's employees to any of your existing or potential customer  
 18 where "infringement" was alleged. However, Genea and your clients are engaged in a  
 19 dispute regarding Genea's IP. The facts that there exists IP, that there exists a dispute, are true  
 20 and real and not defamation . . .". *Id.*

22 97) Despite numerous requests, GENEVA refused to explain its allegations that WSA  
 23 infringed on the '245 Patent. When FULTON's counsel stated to GUIST that "I looked for a  
 24 definition of "metered energy usage data" and found none in the patent nor any in any  
 25 publicly available source of information", he responded that "[o]ur position is that your  
 26 clients infringe the stated claims under a reasonable claim construction. Certainly every term  
 27 need not have an express definition in the specification. we [sic] believe that this term is  
 28 met."

1 98) GENEVA willfully and intentionally avoided providing the information which Plaintiffs  
2 sought and need to avoid willful infringement.

3 99) GENEVA conducted and then provided only a frivolous claims infringement analysis.

4 100) Soon thereafter, GUIST emailed to Mr. Richardson: “Greg, I’m working on a letter to  
5 you, what is your street address? I’ll email you the letter when it is done, just wanted the right  
6 address to make the address fields look right.” Guist thus promised to provide a claims  
7 infringement analysis.

8 101) In reply to this counsel’s response providing his then-current address, GUIST stated  
9 on November 1, 2011: “Thanks, hope to have something to you by the end of the week.”  
10 And subsequently on November 18, 2011: “Greg, my letter to you is delayed due to Genea  
11 hiring a new CEO who needs to be brought up to speed on the relevant issues. I’m not sure  
12 what is going to happen next (or when) but just wanted to let you know.”

13 102) Because of the vagueness of Genea’s C&D Letter and its lack of a claims  
14 infringement analysis, Plaintiffs requested multiple times for an explanation of Genea’s  
15 claims of infringement. Genea never supplied an explanation other than to say that under a  
16 reasonable interpretation of the claims of the ‘245 Patent, WSA infringed. Genea informed  
17 Plaintiffs that it was their responsibility to avoid infringement.

18 103) When Plaintiffs notified GENEVA that there could not possibly be any infringement  
19 because WSA did not involve “metered energy usage data”, Genea did not respond or engage  
20 in further analysis or provide a counter-analysis. When FULTON requested that GENEVA  
21 stop making public accusations of infringement, GENEVA refused. When Plaintiffs requested  
22 that GENEVA withdraw its C&D Letter because no explanation of infringement had ever been  
23 provided, again Genea refused. After many requests for a written explanation of allegations  
24 of infringement, Genea finally stated that they would provide an explanation. Yet, Genea  
25 failed to do so.

26 104) GENEVA broke its promise to provide a claims infringement analysis and failed to  
27 provide any information to FULTON which he needed to avoid willful infringement. This

1 broken promise was an attempt to delay FULTON from filing a lawsuit and create issues  
 2 regarding statute of limitations.

3 **VI. THE FEDERAL ACTION AND GENEÀ'S FAILURE TO WITHDRAW ITS  
 4 ALLEGATIONS OF PATENT INFRINGEMENT AND WRONGFUL IMPACT  
 5 ON ITS INTELLECTUAL PROPERTY.**

6 **A. First Action For Declaratory Relief.**

7 105) Litigation between the parties began in federal court on September 10, 2012 when  
 8 Plaintiffs filed an action for declaratory relief in the United States District Court, Southern  
 9 District of California (SA CV 12-01506) [FEDERAL LITIGATION]. Plaintiffs sought a  
 10 declaration that WSA does not infringe on the '245 Patent. On or about December, 2013  
 11 Plaintiffs became the prevailing party in the Federal Litigation when GENEÀ covenanted to  
 12 not sue Plaintiffs for infringement on the '245 Patent for existing versions of WSA only.

13 106) FULTON did not seek a determination that the '245 Patent was invalid in the  
 14 FEDERAL LITIGATION because he had insufficient information on the scope of the patent  
 15 claims and damages. FULTON did not then raise California state law claims because  
 16 damages and unfair competition claims had not yet fully accrued.

17 107) Under a then-existing split of authority among the federal circuits, the covenant-to-  
 18 not-sue eliminated any federal question arising under the patent laws of the United States  
 19 under a then-existing split of authority. Current law provides that a covenant offered by one  
 20 with the burden of proof of infringement does not eliminate federal question jurisdiction.

21 **B. GENEÀ's Third Inspection of WSA.**

22 108) GENEÀ conducted a third Inspection of WSA, which lasted about two (2) hours  
 23 [FEDERAL INSPECTION] GENEÀ's expert Dr. Ken Goldberg and VOYSEY, the named  
 24 inventor of the '245 Patent, took turns inspecting WSA.

25 109) GENEÀ saw the same web pages that are available on [www.WSA.com](http://www.WSA.com).

26 110) GENEÀ now knows the internal functionality of the WSA platform. This information  
 27 gives them a competitive advantage and would not have been acquired but for the inspections.

1 111) GENEVA did not know that Plaintiffs knew of GENEVA's Secret Inspection or Internet  
2 Inspection until a hearing on or about October 2013 during the Federal Litigation.

3 **C. GENEVA Offered a Covenant to Not Sue For Infringing the '245 Patent.**

4 112) During the Federal Litigation GENEVA delayed acknowledging that WSA did not  
5 infringe the Patent '245 until December 2013, even though from inspections in 2008 and  
6 2010 it knew that WSA did not infringe the '245 Patent.

7 113) GENEVA delayed the covenant-to-not-sue until December 2013 because it wanted to  
8 create the impression that it had no grounds for believing that there was no infringement until  
9 its Second Inspection of WSA during the Federal Litigation on or about October 2013.

10 114) Since the COVENANT-TO-NOT-SUE does not cover the full scope of GENEVA's  
11 allegations of impact and infringement on Geneva's intellectual property, the Plaintiffs were  
12 forced into filing this lawsuit. The damaging consequences of sending the C & D Letter  
13 continue to cause damages to the Plaintiffs because the C & D Letter continues to exert an  
14 inhibiting effect on Plaintiffs' business by restricting sales and further development of WSA.

15 115) GENEVA admits that WSA does not infringe on the Patent '245. But GENEVA refuses  
16 to withdraw its C & D Letter, thereby continuing the harm caused by the C & D.

17 116) The conclusion of the federal litigation did not eliminate state-law claims because the  
18 COVENANT-TO-NOT-SUE does not cover the full scope of GENEVA's allegations of  
19 infringement and wrongful impact on intellectual property. Actual and potential customers of  
20 Plaintiffs continue to cite this patent and intellectual property dispute between the parties as a  
21 good reason to not use or purchase anything using WSA.

22 117) By sending its C & D Letter, GENEVA caused and continues to cause the damages to  
23 the Plaintiffs by forcing them to withdraw WSA from the market and refrain from further  
24 developing WSA. GENEVA refusal to withdraw its C & D Letter further restricts the Plaintiffs  
25 from developing the business and technology based on the WSA technology platform.  
26 GENEVA continues to benefit from its C & D Letter by obtaining profits and other business  
27 benefits which it would not have obtained.

1                   **D. GENEVA's Incomplete Covenant-To-Not-Sue Does Not Cover Allegations**  
2                   **of Wrongful Impact on GENEVA's Intellectual Property.**

3                   118) By 2013, GENEVA promised to not sue Plaintiffs for infringing on the '245 Patent. But  
4                   GENEVA did not promise to not sue from wrongful impact on its intellectual property. The  
5                   Covenant-to-Not-Sue was ineffective because clients and customers of Plaintiffs continue to  
6                   cite GENEVA's allegations of patent infringement and wrongful impact as reasons for  
7                   declining to use the WSA technology platform.

8                   119) GENEVA never provided a justification for it claims that WSA infringed on the '245  
9                   Patent. Nor did GENEVA justify its demands that Plaintiffs cease to market and sell WSA. By  
10                  refusing to withdraw its C & D Letter, GENEVA continues to maintain their demands that the  
11                  Plaintiffs stop impacting GENEVA's intellectual property.

12                  120) The customers and clients of the Plaintiffs are pragmatic and have reasonably decided  
13                  not to use or purchase WSA because of the cloud of suspected infringement which GENEVA  
14                  raised but now refuses to dispel.

15                  **E. GENEVA Refused To Withdraw Its Cease and Desist Letter Despite**  
16                  **Admitting That WSA Does Not Infringe Upon the '245 Patent.**

17                  121) GENEVA continues to refuse to withdraw its C & D Letter.

18                  122) GENEVA maintains its C & D Letter because it intends to do everything possible to  
19                  prevent people from using and further developing WSA.

20                  123) Potential clients and customers of Plaintiffs are reluctant to involve themselves with  
21                  physical installations of WSA due to GENEVA's allegations of patent infringement and wrongful  
22                  impact on its intellectual property. GENEVA continues to gain an unfair competitive edge over  
23                  the Plaintiffs and the Plaintiffs continue to lose business and full access to their WSA  
24                  technology platform and associated business due to GENEVA's conduct.

25                  124) In sum, GENEVA's use of a cease and desist letter to deter the Plaintiffs from  
26                  competing with them is anti-competitive. Sending its C & D was unfair because GENEVA  
27                  sent its C & D Letter without any description of infringing conduct.

1 125) GENEVA actions are oppressive and unfair because Plaintiffs need a description of  
2 infringing conduct in order to avoid willful infringement, assuming that infringement exists.

3 126) GENEVA's refusal to provide claims infringement analysis is fraudulent. As a result of  
4 Geneva's C & D Letter alleging impact on its intellectual property, Geneva owed a duty to  
5 FULTON to respond to inquiries regarding any alleged infringement or impact on Geneva's  
6 intellectual property so that FULTON could avoid future infringement, if any existed. As a  
7 result of sending a C & D Letter without a description of any infringing conduct, GENEVA  
8 owed a duty to FULTON further explain its allegations of infringement.

9 127) On November, 2011 GENEVA's counsel GUIST promised to provide a claims  
10 infringement analysis, but failed to do so. Had FULTON known that said promise would be  
11 breached, they would have filed their Complaint much sooner.

12  
13 **VII. VIOLATIONS ALLEGED**  
14 **COUNT 1 -- Conversion**

15 128) Plaintiff re-alleges and incorporates the allegations of the preceding paragraphs of this  
16 Complaint as if fully set forth herein.

17 129) Plaintiff uses property consisting of tangible software and hardware systems which  
18 can be converted. The technology platform WSA consists of tangible forms of software on  
19 hardware and computer systems. FULTON has rights to possess and access these WSA  
20 systems and computers using WSA software and business equipment supported by WSA.

21 130) FULTON has the right to use and possess their technology, business, and intellectual  
22 property, including WSA and associated business equipment, without interference caused by  
23 Geneva. Upon receiving Geneva's C&D Letter, FULTON has the right to an explanation from  
24 GENEVA regarding its allegations of infringement and wrongful impact on GENEVA's IP in  
25 order to avoid future infringement and wrongful impact and to protect themselves from the  
26 consequences of willful infringement.

27 131) By July 26, 2012 it became apparent that Geneva wrongfully refused to provide a  
28 description of the conduct infringing on its '245 Patent and wrongfully impacting GENEVA's

1 IP. Since infringement might have been found, a description of allegedly infringing conduct  
 2 was needed by the FULTON because Genea threatened to deprive FULTON of his  
 3 possession of and access to the WSA technology platform and related business property  
 4 through confiscation or destruction of WSA under the patent laws. FULTON also required a  
 5 description of infringing conduct to avoid liability for willful patent infringement and  
 6 wrongful impact on Genea's intellectual property.

7 132) Genea wrongfully refused to explain its allegations of patent infringement and  
 8 wrongful impact on intellectual property in order to increase pressure on FULTON to stop  
 9 using, selling, and further developing the WSA technology platform. Genea concealed  
 10 infringement information with the intent to force FULTON to abandon and/or stop using,  
 11 selling, and accessing the WSA technology platform for fear of ruinous patent litigation and  
 12 liability for willful infringement.

13 133) Genea continues to substantially interfere with FULTON's of the use and possession  
 14 of their products and technology by failing to withdraw its cease and desist letter which still  
 15 alleges patent infringement and wrongful impact on Genea's intellectual property. Genea's  
 16 C&D Letter is still relied upon by actual and potential clients and customers of Plaintiff in  
 17 declining to use or consider WSA technology platform.

18 134) By refusing to withdraw its C&D Letter, Genea continues to intentionally and  
 19 substantially interfere with the FULTON's right to possess and access the WSA technology  
 20 platform and related business property. Maintaining the C&D Letter creates continuing  
 21 doubts as to whether WSA infringes on Genea's '245 Patent and wrongfully impacts  
 22 GENEVA's IP. As a direct and proximate result of Genea's failure to withdraw its C&D  
 23 Letter, FULTON has essentially stopped using and developing WSA and actual and potential  
 24 clients and customers of FULTON have stopped purchasing WSA equipment. At one point,  
 25 given GENEVA's allegations of infringement on its '245 Patent, FULTON lost his rights to  
 26 possess and access WSA equipment.  
 27  
 28

1 135) FULTON did not consent to Genea's concealment of infringement information and  
2 the resulting substantial interference with the WSA technology platform and its  
3 accompanying business equipment. Genea's action harmed FULTON by forcing them to  
4 reduce usage and future development of the WSA equipment and technology, so that  
5 FULTON eventually abandoned WSA and its associated business equipment.

6 136) By withholding information on allegations of patent infringement and wrongful  
7 impact on GENEVA's IP, Genea substantially interfered with FULTON's rights to possess,  
8 use, access, modify, and further develop the WSA technology and business equipment by  
9 threatening ruinous patent litigation which would have ended up with the confiscation and  
10 destruction of WSA equipment.

11 137) FULTON was harmed by Genea's refusal to explain its allegations of infringing  
12 conduct because infringement on the '245 Patent would eventually result in the confiscation  
13 or destruction of the WSA platform under the patent laws. Without an explanation of  
14 infringing conduct, FULTON could not modify WSA systems in order to avoid willful  
15 infringement.

16 138) FULTON continues to be harmed by Genea's refusal to withdraw its allegations of  
17 wrongful impact on Genea's intellectual property and Genea's failure to identify which  
18 products and technology of FULTON wrongfully impact Genea's intellectual property  
19 because actual and potential clients and customers of FULTON decline to use or consider  
20 WSA technology.

22 139) Genea's failure to describe the conduct infringing on its patent and refusal to identify  
23 which products and technology wrongfully impact GENEVA's IP were a substantial factor in  
24 causing business losses to the FULTON and preventing him from the full use, access, future  
25 development, and possession of the WSA technology platform equipment and business.  
26 Genea's failure to withdraw its cease and desist letter after December, 2013 continues to be a  
27 substantial factor in causing business losses to the FULTON and preventing him from fully  
28 using WSA equipment.

1 140) The last of the above-cited actions of Genea causing damages to FULTON, *e.g.*  
2 GENEVA's refusal to withdraw its C&D Letter, occurred within two (2) years of the filing date  
3 of this Complaint and the damages continue to accrue. Plaintiff's claims for conversion under  
4 the UCL started to accrue when the last of the above-cited actions by GENEVA causing  
5 damages to the Plaintiff occurred, *e.g.* GENEVA's refusal to withdraw its C&D Letter in  
6 December 2013. This accrual occurs within four (4) years of the filing of this Complaint and  
7 within the statute of limitations for UCL claims.

8 141) As a result of giving up the use of and access to WSA property and associated  
9 business and technology, FULTON suffered damages based on the market value of his WSA  
10 business and WSA systems in a sum according to proof but exceeding the jurisdictional limits  
11 of this court.

12 **COUNT 2 -- Trespass To Chattels**

13 142) Plaintiff re-alleges and incorporates the allegations of the preceding paragraphs of this  
14 Complaint as if fully set forth herein.

15 143) Plaintiff owns business equipment using the technology platform WSA which consists  
16 of tangible forms of software on hardware and computer systems. FULTON has the right to  
17 possess and access systems and computers using WSA software and business equipment  
18 supported by WSA.

20 144) By July 26, 2012 it became apparent that Genea refused to provide a description of the  
21 conduct allegedly infringing on its '245 Patent and wrongfully impacting Genea's intellectual  
22 property. This refusal was wrongful because Genea had a duty to inform FULTON of what  
23 the infringing conduct was, if any, so that FULTON could avoid future willful patent  
24 infringement and unnecessary wrongful impact on Genea's intellectual property.

25 145) As a result of the FULTON requesting an explanation from Genea about Genea's  
26 allegations of infringement on its intellectual property, Genea owed a duty to Plaintiff to  
27 disclose facts that would explain its allegations. Genea knew or should have known that it  
28 owed a duty to provide a description of infringing and impacting conduct by WSA. Genea

1 knew or should have known that WSA did not wrongfully impact GENEVA's IP or infringe on  
2 Genea's '245 Patent as a result of its prior inspections.

3 146) By refusing to provide the requested information regarding infringing conduct and  
4 wrongful impact, Genea intended to interfere with Plaintiff's use and possession of systems  
5 and equipment with WSA installed by forcing Plaintiff to abandon WSA. At the same time,  
6 Genea intended to discourage actual and potential clients from purchasing and using WSA  
7 systems and equipment.

8 147) Plaintiff did not consent to Genea's interference with computers and systems using  
9 WSA by, among other actions, refusing to accede to Genea's demands to cease using and  
10 marketing WSA.

11 148) Genea refusal to explain its allegations of patent infringement and wrongful impact on  
12 Genea's intellectual property was wrongful and caused Plaintiff harm because such  
13 explanation was withheld in order to increase the pressure on Plaintiff to stop using, selling,  
14 and further developing WSA technology platform. Genea's refusal to provide any description  
15 of infringing conduct was motivated by a desire to thereby force Plaintiff to abandon and/or  
16 stop using, selling, and accessing the WSA technology platform for fear of ruinous patent  
17 litigation and liability for willful infringement.

18 149) Genea continues to substantially interfere with Plaintiff's use and possession of their  
19 products and technology including WSA equipment by failing to withdraw its C&D Letter  
20 which still alleges patent infringement and wrongful impact on Genea's intellectual property.  
21 This letter is still relied upon by actual and potential clients and customers of Plaintiff in  
22 declining to use or consider WSA technology. Maintaining the C&D Letter creates  
23 continuing doubts in the minds of actual and potential clients and customers of Plaintiff as to  
24 whether WSA infringes on Genea's '245 Patent and wrongfully impacts GENEVA's IP.

25 150) As a direct and proximate result of Genea's failure to withdraw its C&D Letter,  
26 Plaintiff has suffered losses because he has had to essentially stop using and developing the  
27 WSA technology platform.

1 151) By withholding information on allegations of patent infringement and wrongful  
2 impact on Genea's intellectual property, Genea's actions became a substantial factor in  
3 causing Plaintiff to abandon WSA equipment and technology. This in turn caused actual  
4 customers and clients who were contemplating using WSA to decide not to purchase and/or  
5 use WSA. Genea's failure to withdraw its cease and desist letter after December, 2013  
6 continues to be a substantial factor in causing business losses to the Plaintiff and preventing  
7 him from fully using WSA equipment, technology, and business.

8 152) The last of the above-cited actions of Genea causing damages for trespass to chattels  
9 occurred within two (2) years of the filing date of this Complaint and the damages continue to  
10 accrue. Plaintiff's claims for trespass to chattels under the UCL started to accrue when the  
11 last of the above-cited actions by GENEVA causing damages to the Plaintiff occurred, *e.g.*  
12 GENEVA's refusal to withdraw its C&D Letter in December 2013. This accrual occurs within  
13 four (4) years and within the statute of limitations for UCL claims, of the filing of this  
14 Complaint.

15 153) As a result of giving up access to and use of property incorporating WSA technology  
16 and its accompanying business, Plaintiff suffered damages based on the market value of WSA  
17 in a sum according to proof but exceeding the jurisdictional limits of this court.

18 **COUNT 3 -- Implied Contract And Quantum Meruit**

19 154) Plaintiff re-allege and incorporate the allegations of the preceding paragraphs of this  
20 Complaint as if fully set forth herein.

21 155) The Plaintiff owns and manages installations using the technology platform WSA and  
22 has rights to possess and access systems with WSA technology implemented and the business  
23 supported by WSA. Genea wanted to obtain the WSA technology platform and the business  
24 supported by it. By demanding that Plaintiff "cease[] to market and sell WSA" and refusing  
25 to provide a description of infringing or impacting conduct, Genea knew or should have  
26 known that Plaintiffs would asset to Genea's demands.

1 156) By refusing to withdraw its C&D Letter as of December 2013, Genea continues to  
2 intentionally and substantially interfere with Plaintiff's right to possess, access, and further  
3 develop the WSA technology platform and business property. By way of a non-exhaustive  
4 example, a reasonable jury could find that maintaining the C&D Letter creates continuing  
5 doubts as to whether WSA infringes on GENEVA's '245 Patent and wrongfully impacts  
6 GENEVA's IP.

7 157) Plaintiff agreed to Genea's demands by shutting down parts of its WSA business and  
8 stopping further development of their WSA business, thereby conferring a significant benefit  
9 on Genea by reducing competition and handing over business to Genea.

10 158) Genea agreed to Plaintiff actions by covenanting to not sue for infringement on its  
11 '245 Patent, thereby conferring a significant benefit on Plaintiff by eliminating Genea's  
12 threats of litigating for willful infringement on its '245 Patent.

13 159) Plaintiff was harmed by Genea's refusal to explain its allegations of infringing conduct  
14 because infringement on the '245 Patent would eventually result in the confiscation or  
15 destruction of the WSA systems under the patent laws. Without an explanation of the  
16 infringing conduct, Plaintiff could not modify WSA systems in order to avoid infringement.  
17 Plaintiff continues to be harmed by Genea's refusal to withdraw its allegations of wrongful  
18 impact on GENEVA's IP because actual and potential clients and customers of Plaintiffs  
19 decline to use WSA due to the allegations of infringement.

20 160) Within the last four (4) years since filing this Complaint, by the conduct of the parties,  
21 an implied contract was formed in which Genea demanded that Plaintiff "cease[] to market  
22 and sell WSA" and in return Genea would not to "take all appropriate legal action to protect  
23 its intellectual property, including its patent rights." Plaintiff ceased to market and sell WSA  
24 in compliance with Genea's demand. In return, Genea has not taken any legal action to  
25 protect its intellectual property and patent rights.

26 161) Plaintiff's claims for breach of implied contract and quantum meruit under the UCL  
27 started to accrue when the last of the above-cited actions by GENEVA causing damages to the

1 Plaintiff occurred, *e.g.* GENE A's refusal to withdraw its C&D Letter in December 2013.  
 2 This accrual occurs within four (4) years of the filing of this Complaint and within the statute  
 3 of limitations for UCL claims.

4 162) As a result of giving up access to and use of property incorporating WSA technology  
 5 and its accompanying business by acceding to Genea's demands to give up WSA, Genea  
 6 owes Plaintiff the reasonable market value of the systems using the WSA technology  
 7 platform and the underlying business in a sum according to proof, but exceeding the  
 8 jurisdictional limits of this court.

9 **COUNT 4 -- Intentional Misrepresentation And Deceit**

10 163) Plaintiffs re-allege and incorporate herein the allegations of the preceding paragraphs  
 11 as if fully set forth herein.

12 164) Genea, through authorized agents Keith Voysey, Chief Technology Officer, David  
 13 Balkin, position unknown, and Chris Taylor, position unknown, in the C & D Letter,  
 14 represented that WSA infringed on Genea's '245 Patent and that Plaintiff's products and  
 15 technology wrongfully impacted Genea's intellectual property. The exact roles of these  
 16 defendants is unknown, but when discovery is allowed to proceed, Plaintiff will amend this  
 17 Complaint. So far, discovery by Plaintiff has been unfairly stifled, while GENE A was  
 18 granted permission to conduct an intrusive inspection of WSA.

19 165) By sending a C&D Letter without a description of the infringing conduct or the  
 20 wrongful impact on Genea's intellectual property, Genea intended to deceive Plaintiff into  
 21 believing that WSA infringed on Genea's '245 Patent and that Plaintiff's products and  
 22 technology wrongfully impacted GENE A's IP.

23 166) Genea knew that its representation that WSA infringed on Genea's '245 Patent was  
 24 false when it sent its C&D Letter because Genea had already secretly inspected WSA in 2008  
 25 and conducted another inspection in 2010. GENE A should be estopped from claiming any  
 26 infringement since it failed to cite WSA as prior art in its patent application at the USPTO.  
 27

1 167) Genea knew that its representation that WSA infringed on the claims of the '245  
2 Patent were false through its internet inspection of WSA in 2010. Genea now knows that  
3 WSA does not infringe on the '245 Patent based on its inspections. Yet Genea continues to  
4 maintain its allegation of infringement on its '245 Patent and wrongful impact on GENEVA's  
5 IP.

6 168) Genea made these representations recklessly since it had sufficient information to  
7 know the lack of infringement as a result of its secret inspection of WSA in 2008 and internet  
8 viewing of WSA on or about 2010. Genea made these representations without regard for the  
9 truth of its allegations because Genea did not perform a claims infringement analysis. Genea  
10 representations were reckless because it could have, but did not, request an inspection of  
11 WSA and the products and technology of the Plaintiffs before sending its C&D Letter.  
12 Genea's refusal to withdraw these false representations even after covenanting to not sue for  
13 infringement in December, 2013 are reckless because it has sufficient information from its  
14 three inspections of WSA to know that there is no infringement.  
15

169) Genea intended that Plaintiff rely on the representations in Genea's C&D Letter in  
17 order to prevent the Plaintiff from further developing WSA and further expanding the  
18 Plaintiff's business using WSA.

19 170) Plaintiff reasonably relied upon Genea's representations that WSA infringed on  
20 Genea's '245 Patent and that their products and technology impacted Genea's intellectual  
21 property by curtailing Plaintiff's use of WSA in order to avoid any willful infringement.  
22 Plaintiff's actions in reducing or eliminating using and developing WSA was reasonable  
23 because of the threat of ruinous patent infringement litigation, the prospect of willful  
24 infringement, as well as the possibility of confiscation or destruction of WSA computer  
25 systems if patent infringement were proven. These actions of Plaintiff were necessary  
26 because, without any explanation from Genea describing any infringing conduct, Plaintiff was  
27 unable to explain to their customers and clients that there was no infringement.  
28

1 171) As a direct result of Genea's failure to explain its allegations of patent infringement in  
2 its C & D Letter and thus preventing the Plaintiff from changing or modifying WSA to avoid  
3 infringing on Genea's '245 Patent, since 2012 Plaintiff began to suffer business losses as a  
4 result of not being able to use and access WSA or further develop products, technology, and  
5 business using WSA to avoid impacting Genea's intellectual property.

6 172) These representations are false because WSA does not infringe on Genea's '245  
7 Patent and Plaintiff's products and technology do not impact Genea's intellectual property.  
8 Genea concealed the fact that WSA does not infringe on Genea's '245 Patent by not including  
9 a description of infringing conduct in the C&D Letter. Genea further concealed the fact of  
10 non-infringement by refusing to provide a claims infringement analysis upon the request of  
11 Plaintiffs. Genea failed to disclose that WSA does not infringe on the '245 Patent by failing  
12 to provide a claims infringement analysis.

13 173) As a direct and proximate result of receiving Genea's C&D Letter and reading  
14 Genea's demand to stop using and marketing WSA, Plaintiff relied on Genea's statements  
15 contained within the C&D Letter by reducing and/or stopping use of their own technology  
16 and by exiting and/or suffering losses and reductions in their own businesses. Plaintiff's  
17 compliance with Genea's demand to "cease[] to market and sell WSA" was reasonable due to  
18 the threats of ruinous patent litigation, the lack of a claims infringement analysis from Genea,  
19 and Genea's failure to describe any infringing conduct. These actions were reasonable in  
20 light of the Plaintiff's intent to avoid willful infringement and desire to avoid future potential  
21 confiscation of infringing systems incorporating WSA, should infringement be found.

22 174) Plaintiff's reliance on Genea's conduct and C&D Letter in reducing or stopping use  
23 and further development of the WSA technology and related business was reasonable in view  
24 of Genea's threats of ruinous patent litigation, its demand to "cease[] to market and sell  
25 WSA", and the threat of confiscation and destruction of property incorporating WSA under  
26 the patent laws.

1 175) As a direct and proximate result of the actions of Genea in sending the C&D Letter  
 2 and thereafter refusing to explain its allegations of infringement on Genea's intellectual  
 3 property, Plaintiff lost the use and value of their intellectual property and business based on  
 4 WSA and its products and technology. As a direct and proximate result of Genea's failure to  
 5 withdraw the C&D Letter, even after covenanting to not sue in the federal litigation, Plaintiff  
 6 continues to suffer business losses due to Genea's continues assertion of wrongful impact on  
 7 Genea's intellectual property.

8 176) Genea's actions were malicious in that it had sufficient information about WSA when  
 9 it sent the C&D Letter to know or conclude that WSA did not infringe on Genea's '245 Patent  
 10 through its secret inspection in 2008 and internet inspection in 2010. Even then, Genea could  
 11 have obtained sufficient information to know that WSA did not infringe on Genea's '245  
 12 PATENT or impact Genea's intellectual property by requesting an inspection. Genea ignored  
 13 Plaintiffs statement that WSA could not possibly infringe on Genea's '245 Patent because  
 14 WSA did not use user metered energy usage data. Yet Genea willfully sent its C&D Letter  
 15 knowing that it would oppress Plaintiff into complying with Genea's demand to "cease[] to  
 16 market and sell WSA".

17 177) Genea's actions were deceitful in that it refused to disclose or make available  
 18 information on any infringing or impacting conduct by WSA, even though the Plaintiff had  
 19 requested such information multiple times and even though Genea knew that its allegations of  
 20 infringement and impact on its intellectual property and '245 Patent were false.

21 178) Genea's actions as stated herein were oppressive in that they were done with intent to  
 22 keep Plaintiff from using WSA to compete in the markets in which the parties compete.  
 23 Genea's refusal to withdraw its C & D Letter is oppressive against the Plaintiffs since Genea  
 24 knows full well that there is no infringement and because Genea is able to continue benefiting  
 25 from its false allegations of infringement and wrongful impact on its intellectual property.

26 179) Late in the game, Genea promised to provide a claims infringement analysis, but  
 27 Genea ultimately failed to do so. Genea's actions as described above, including its broken

1 promise to provide a claims infringement analysis, were malicious, deceitful, and oppressive  
 2 in that they prevented Plaintiff from exercising their rights to use WSA and their products and  
 3 technology without interference, thus entitling the Plaintiff to an award of punitive damages.

4 180) Genea, through their authorized agents Keith Voysey, Chief Technology Officer,  
 5 David Balkin, position unknown, and Chris Taylor, position unknown, in Genea's C & D  
 6 Letter, made or authorized the above-cited actions. The exact roles of these defendants are  
 7 unknown, but when discovery is allowed to proceed, Plaintiff will amend this Complaint to  
 8 be plead specific newly discovered fact. So far, discovery by Plaintiff has been unfairly  
 9 stifled, while GENEVA was granted permission to conduct an intrusive inspection of WSA.

10 181) The last of the series of actions by Genea cited above causing damages to Plaintiff  
 11 occurred within three (3) years of the filing of this Complaint and damages continue to  
 12 accrue. Plaintiff's claims for intentional misrepresentation and deceit under the UCL started  
 13 to accrue when the last of the above-cited actions by GENEVA causing damages to the Plaintiff  
 14 occurred, *e.g.* GENEVA's refusal to withdraw its C&D Letter in December 2013. This accrual  
 15 occurs within four (4) years of the filing of this Complaint and within the statute of limitations  
 16 for UCL claims.

17 182) As recited herein, GENEVA's action were malicious, deceitful, and oppressive because  
 18 GENEVA did not perform a claims infringement analysis and then refused to provide  
 19 information necessary to avoid willful infringement and wrongful impact, thereby directly  
 20 and proximately causing Plaintiff to suffer damages from lost assets and lost or reduced  
 21 business opportunities in a sum according to proof but exceeding the jurisdictional limits of  
 22 this court.

23 **COUNT 5 -- Fraudulent Misrepresentation Regarding Claims Of Patent  
 24 Infringement And Wrongful Impact on GENEVA's IP.**

25 183) Plaintiff re-alleges and incorporates herein the allegations of the preceding paragraphs  
 26 of this Complaint as if fully set forth herein.

1 184) Genea, through their authorized agents Keith Voysey, Chief Technology Officer,  
2 David Balkin, position unknown, and Chris Taylor, position unknown, in Genea's C & D  
3 Letter, represented that WSA infringed on Genea's '245 Patent and that Plaintiffs' products  
4 and technology wrongfully impacted GENEVA's IP. Genea made the representations above  
5 when it knew, or should have known, that they were false due to prior inspections of WSA in  
6 2008 and through the internet about 2010. Genea also knew or should have known that WSA  
7 did not infringe on Genea's '245 Patent because Plaintiff informed them that WSA did not  
8 use user metered energy usage data.

9 185) The representations above were made by Genea's authorized agents with the intent to  
10 fraudulently force the Plaintiff from the marketplace in which the parties compete and to  
11 preclude the Plaintiff from using, further developing or having access to WSA and the  
12 Plaintiff's products and technologies.

13 186) Even now, Genea refuses to withdraw these representations of patent infringement and  
14 impact on Genea's intellectual property with the intention of harming Plaintiff's business  
15 through creating doubt in the marketplace in which the parties compete as to whether WSA  
16 may infringe on Genea's '245 Patent and whether Plaintiff's products and technology  
17 wrongfully impact GENEVA's IP.

18 187) Even after covenanting not to sue in the federal litigation, Genea continues to benefit  
19 from its allegations of patent infringement and wrongful impact on Genea's intellectual  
20 property and oppress Plaintiff who still cannot fully use or further develop WSA because the  
21 covenant to not sue does not specify the software process for which Genea will not sue.

22 188) As a direct and proximate result of sending its C&D Letter without including any  
23 description of any infringing conduct, Genea knowingly, willfully, and wrongfully failed to  
24 disclose facts relevant to determining if WSA infringed on Genea's '245 Patent and whether  
25 the products and technology of Plaintiff wrongfully impacted Genea's intellectual property.

26 189) Genea's concealment of these material facts about the relationship between its own  
27 technology and the products and technology of Plaintiff was malicious because it prevented

1 the Plaintiffs from avoiding willful infringement and wrongful impact. Genea's non-  
2 disclosure and concealment of these facts prevented Plaintiff from explaining to their  
3 customers and clients that there was no infringement.

4 190) By failing to request or even conduct an inspection of the WSA platform before  
5 sending its C&D Letter, Genea did not do everything reasonable to investigate its allegations  
6 that WSA infringed on Genea's '245 Patent and that Plaintiff's products and technology  
7 wrongfully impacted Genea's intellectual property. By failing to do everything reasonable  
8 before demanding that the Plaintiff stop marketing and selling WSA, Genea acted recklessly  
9 and oppressively against Plaintiff by forcing him to stop or reduce usage and development of  
10 the WSA platform and related products and technology.

11 191) By failing to request any information from the Plaintiffs concerning the WSA  
12 platform before sending its C&D Letter, Genea was willfully reckless in not evaluating  
13 whether WSA infringed on Genea's '245 Patent and whether the Plaintiff's products and  
14 technology wrongfully impacted Genea's intellectual property.

15 192) After sending the C & D Letter, Genea owed duties to Plaintiff to explain its  
16 allegations of impact on GENEVA's IP, which would have assisted Plaintiff to avoid further  
17 wrongful impact, if any. GENEVA also owed a duty to describe conduct infringing on Genea's  
18 '245 Patent, which would have assisted Plaintiff in avoiding willful infringement, if any.

19 193) Genea violated and continues to violate these duties owed to Plaintiff by withholding  
20 and concealing information which would have aided Plaintiff in avoiding wrongful impact on  
21 GENEVA's IP, if any, and avoiding willful infringement on the '245 Patent, if any.

22 194) Genea knew or should have known, based on its secret inspection of WSA in 2008 and  
23 its internet inspection in 2010 that WSA did not wrongfully impact Genea's intellectual  
24 property or infringe on Genea's '245 Patent. Before sending its C&D Letter, Genea had no  
25 reasonable grounds for believing that WSA infringes on the '245 Patent or that the Plaintiffs'  
26 products and technology wrongfully impacted GENEVA's IP.  
27  
28

1 195) Upon receiving a cease and desist letter, Plaintiff has a right to know the facts  
2 underlying any allegation of impact on intellectual property or infringement on a patent of the  
3 sender in order to prepare a response to a cease and desist letter. By refusing to explain its  
4 allegations of impact or provide a description of impacting conduct or withdraw the C&D  
5 Letter in December, 2013 after promising not to sue, Genea knew that such silence would  
6 have a deleterious effect on Plaintiff's ability to further develop WSA and its business.

7 196) Despite promising not to sue for infringement on its '245 Patent for present versions of  
8 WSA, Genea nonetheless maintains its C&D Letter and its threats to sue for impact on  
9 GENEVA's IP and future versions of WSA. Refusing to withdraw said letter is done in  
10 complete disregard of the rights of Plaintiff's to know the facts of any alleged impact on  
11 Genea's intellectual property, since Plaintiff has no way of knowing how to further develop  
12 WSA business without infringing on Genea's '245 Patent and other intellectual property.

13 197) Plaintiff has a right to compete in the markets in which the parties compete. By  
14 sending its C&D Letter in June, 2011, Genea intended to force the Plaintiff from the  
15 businesses and markets in which they compete. Genea knew or should have known that by  
16 sending its C & D Letter and refusing to explain any infringing conduct, that Plaintiff would  
17 withdraw from the markets in which the parties compete in order to avoid willful  
18 infringement. By refusing to withdraw its C&D Letter in December, 2013, Genea intends to  
19 continue to force Plaintiff from the businesses and markets in which the parties compete, and  
20 as a result Genea unfairly interferes with the Plaintiff's right to compete.

22 198) With the threat of potentially ruinous willful infringement and in the absence of any  
23 information on infringement from Genea, Plaintiff took a reasonable course of action and  
24 justifiably relied to their detriment on Genea's representations by severely reducing and  
25 eventually stopping use of WSA systems and equipment. Said course of action was  
26 reasonable in order to eliminate the potential any finding of willful infringement on Genea's  
27 '245 Patent and wrongful impact on Genea's intellectual property.

1 199) As a direct and proximate result of receiving the C & D Letter from Genea and  
2 Genea's refusal to provide any description of infringing conduct or wrongful impact on  
3 Genea's intellectual property, Plaintiff reasonably relied on Genea's statements of  
4 infringement on Genea's '245 Patent and wrongful impact on Genea's intellectual property  
5 by reducing and/or stopping further development the WSA technology platform and business  
6 in order to avoid willful infringement and further wrongful impact, if any.

7 200) Genea's allegations of impact on GENEVA's IP are false. Genea's promise to not sue  
8 Plaintiff for infringement on the '245 Patent for present versions of WSA does not include  
9 suits for impact on GENEVA's IP.

10 201) Genea's allegations of patent infringement are in fact false, as Genea admitted in its  
11 covenant to not sue in the federal litigation.

12 202) Genea's refusal to withdraw its C&D Letter Genea's actions in maintaining it are  
13 oppressive against Plaintiff because Genea intends to reduce and/or interfere with Plaintiff's  
14 further development of WSA business by creating continuing doubt about infringement and  
15 wrongful impact on Genea's intellectual property.

16 203) As a direct and proximate result of Genea's misrepresentation that WSA infringed on  
17 Genea's '245 Patent and that Plaintiff's products and technology wrongfully impact  
18 GENEVA's IP, Plaintiff has suffered damages from lost assets and lost or reduced business in a  
19 sum according to proof but exceeding the jurisdictional limits of this court.

20 204) Genea, through their authorized agents Keith Voysey, Chief Technology Officer,  
21 David Balkin, position unknown, and Chris Taylor, position unknown, in Genea's C & D  
22 Letter, made or authorized the above-cited actions. The exact roles of these defendants are  
23 unknown, but when discovery is allowed to proceed, Plaintiff will amend this Complaint to  
24 be specific. So far, discovery by Plaintiff has been unfairly stifled, while GENEVA was  
25 granted permission to conduct an intrusive inspection of WSA.

1 205) Because Genea acted maliciously, willfully, and in knowing disregard of the rights of  
2 Plaintiffs to be free of false accusations of wrongful impact on Genea's intellectual property  
3 and infringement on the '245 Patent, Plaintiff is entitled to punitive damages.

4 206) The last of the above-cited actions of Genea giving rise to fraudulent  
5 misrepresentation that caused damages to Plaintiff occurred within three (3) years of the filing  
6 of this Complaint and damages continue to accrue. Plaintiff's claims for fraudulent  
7 misrepresentation under the UCL started to accrue when the last of the above-cited actions by  
8 GENEVA causing damages to the Plaintiff occurred, *e.g.* GENEVA's refusal to withdraw its  
9 C&D Letter in December 2013. This accrual occurs within four (4) years of the filing of this  
10 Complaint and within the statute of limitations for UCL claims.

11 207) As a direct and proximate result of Genea's concealment or non-disclosure of facts  
12 that would have demonstrated that WSA did not infringe on Genea's '245 Patent, Plaintiff has  
13 suffered damages from lost assets and lost or reduced business in a sum according to proof  
14 but exceeding the jurisdictional limits of this court.

15 **COUNT 6 -- Intentional Interference With Prospective Economic**  
16 **Advantage**

17 208) Plaintiff re-alleges and incorporates herein the allegations of the preceding paragraphs  
18 of this Complaint as if fully set forth herein.

19 209) FULTON had an economic relationship with John Matter that would have resulted in  
20 an economic benefit to Mr. Fulton. Genea knew of the economic relationships between John  
21 Matter and Mark Fulton because GENEVA addressed its C&D Letter to both FULTON and  
22 the developer of WSA.

23 210) Genea intended to disrupt the economic relationships between John Matter and Mark  
24 Fulton by sending its C&D Letter and thereafter refusing to provide any description of patent  
25 infringing conduct and failing to explain any wrongful impact on GENEVA's IP.

26 211) Genea engaged in wrongful conduct by sending its C&D Letter without first  
27 performing a claims infringement analysis. Genea then wrongfully refused to provide any

1 description of infringing conduct. Genea wrongfully refused to identify any products or  
2 technology of Plaintiff that wrongfully impacted GENECA's IP. Genea wrongfully concealed  
3 facts that WSA did not infringe on Genea's '245 Patent and that Plaintiff's products and  
4 technology did not wrongfully impact GENECA's IP.

5 212) The actions by Genea disrupted the economic relationships between John Matter and  
6 Mark Fulton by preventing Plaintiff from using and further developing the WSA technology  
7 platform to generate business. The refusal of Genea to explain its allegations in its C&D  
8 Letter prevented Plaintiff modifying his systems using WSA to avoid infringing on Genea's  
9 '245 Patent, resulting in other customers and clients of Plaintiff FULTON from using and/or  
10 buying WSA systems.

11 213) Genea intended to disrupt contractual and economic relations FULTON had with Mr.  
12 Matter and other individuals and business entities by making representations alleging that  
13 WSA infringed on Genea's '245 Patent and that Plaintiff's products and technology  
14 wrongfully impacted GENECA's IP. By sending a cease and desist letter demanding that  
15 Plaintiff "cease[] to market and sell WSA", GENECA intended to disrupt FULTON's  
16 relationship with the developer of WSA and Plaintiffs clients. By sending its C&D Letter  
17 without any description of infringing conduct, Genea intended to interfere with the economic  
18 relationship between the Plaintiffs by forcing them to stop further development and use of  
19 WSA, thereby eliminating Plaintiff as competition.

21 214) At the time of the actions of Genea as described herein, Plaintiff had prospective  
22 economic relationships with other multiple individuals and businesses, including competitors.  
23 Genea knew about these prospective economic relationships. Genea knew about the  
24 contractual and prospective economic relationships Plaintiff had with other persons and  
25 entities since the parties competed on the same bids and have a long history of competing  
26 with each other.

27 215) Genea, by making public allegations against the Plaintiffs for patent infringement,  
28 through sending the cease and desist letter demanding that the Plaintiffs cease to use any

1 product or technology that impacts GENEAE's IP, by failing to respond to the Plaintiff's  
 2 requests for clarification of infringement claims, and by failing to withdraw its C&D Letter  
 3 after admitting that the WSA technology platform did not infringe on Genea's '245 Patent,  
 4 did willfully and intentionally disrupt the prospective economic relationships Plaintiff had  
 5 with Mr. Matter and third parties.

6 216) As a direct and proximate result of the actions of Genea described herein, Plaintiff has  
 7 suffered actual disruption to its prospective economic relations with each other and with third  
 8 parties in a sum according to proof but exceeding the jurisdictional limits of this court.

9 217) Genea's failure to provide a description of infringing conduct or identify the products  
 10 and technology that wrongfully impacted Genea's intellectual property or infringed on its  
 11 '245 Patent was malicious because Genea intended to cause harm to Plaintiffs' business using  
 12 WSA. Genea's conduct was despicable because no reasonable person would deliberately  
 13 prevent another person from, if necessary, modifying their conduct or products to avoid  
 14 allegations of infringement and wrongful impact.

15 218) Genea's refusal to provide Plaintiff with infringement information was willful and in  
 16 knowing disregard of the rights of Plaintiff's to modify WSA to avoid willful infringement, if  
 17 any. Genea acted in knowing disregard of Plaintiff's right to receive a description of  
 18 infringing conduct in order to avoid future willful infringement, if any.

20 219) Genea's failure to disclose the facts supporting its allegations of wrongful impact on  
 21 its intellectual property and infringement on its '245 PATENT was malicious because Genea  
 22 withheld such information in knowing disregard of the dangerous consequences for Plaintiff  
 23 for being unable to avoid willful infringement. Genea's actions were despicable because  
 24 Genea inflicted cruel and unjust hardship on Plaintiff by preventing them from modifying  
 25 WSA to avoid willful infringement, if infringement occurred.

26 220) Genea's failure to include any description of infringing conduct in its C&D Letter, its  
 27 refusal to provide facts needed to determine whether infringement occurred, and its  
 28 maintenance of the threats in the C&D Letter after December, 2013 were and are oppressive

1 because Genea intended to prevent or limit Plaintiff's ability to use WSA technology in its  
2 current or future forms to compete with Genea.

3 221) Genea, through their authorized agents Keith Voysey, Chief Technology Officer,  
4 David Balkin, position unknown, and Chris Taylor, position unknown, in Genea's C & D  
5 Letter, made or authorized the above-cited actions. The exact roles of these defendants are  
6 unknown, but when discovery is allowed to proceed, Plaintiff will amend this Complaint to  
7 be specific.

8 222) As recited herein, Genea's malicious, deceitful, and oppressive actions in intentionally  
9 preventing Plaintiff from exercising their rights to use and further develop the WSA platform  
10 entitle Plaintiff to an award of punitive damages.

11 223) The last of the above-cited actions of Genea giving rise to intentional interference with  
12 prospective economic relations and causing damages to Plaintiff occurred within three (3)  
13 years of the filing of this Complaint. Damages continue to accrue. Plaintiff's claims for  
14 intentional interference with prospective economic relations under the UCL started to accrue  
15 when the last of the above-cited actions by GENEVA causing damages to the Plaintiff  
16 occurred, *e.g.* GENEVA's refusal to withdraw its C&D Letter in December 2013. This accrual  
17 occurs within four (4) years of the filing of this Complaint and within the statute of limitations  
18 for UCL claims.

19 224) As recited herein, Genea's actions were and are malicious, deceitful, despicable, and  
20 oppressive towards Plaintiff and were a direct and proximate cause of Plaintiff suffering  
21 damages to the prospective economic relationships with third parties in a sum according to  
22 proof but exceeding the jurisdictional limits of this court.

23 225) As a direct and proximate result of the actions of Genea as described herein, Plaintiff  
24 suffered and continues to suffer actual disruption to its prospective economic relations with  
25 other individuals and business entities in a sum according to proof but exceeding the  
26 jurisdictional limits of this court

## **COUNT 7 -- Negligent Interference With Existing And Prospective Economic Relations**

226) Plaintiff re-alleges and incorporates the allegations of the preceding paragraphs of this Complaint as if fully set forth herein.

227) At the time of the actions of Genea as described herein, Plaintiff had economic relationships with the developer of WSA and with third parties.

228) Genea knew about these economic relationships. By way of a non-exhaustive example, GENEVA addressed its C&D Letter to FULTON and John Matter, the developer of WSA.

229) At the time of the actions of Genea as described herein, Genea owed a duty to Plaintiff to investigate its own claims of wrongful impact on its technology and business before making representations and public accusations that the WSA technology platform violated Genea's intellectual property. Genea owed a duty to Plaintiff to investigate its own claims of infringement before sending its C & D Letter demanding that Plaintiff leave the market in which the parties were competing and to "cease[] to market and sell WSA".

230) Genea owed a duty to Plaintiff to respond to inquiries from Plaintiff regarding Genea's allegations of infringement of its intellectual property, so that Plaintiff could avoid future willful infringement, if infringement existed.

231) By failing to include a description of infringing conduct in its C & D Letter and failing to respond to Plaintiff's inquires, Genea failed in the above-mentioned duties.

232) By way of a non-exhaustive example, GENEVA failed to adequately investigate its claims of infringement and wrongful impact by, *e.g.* by failing to request an inspection of a WSA, by failing to conduct an inspection of a WSA, and failing to request or obtain information on WSA from the Plaintiff. Geneva failed to do everything reasonable that it could have done before sending its C & D Letter to avoid disrupting the economic relationships between Plaintiff and third parties.

1 233) Genea failed to provide any description of infringing or impacting conduct by WSA,  
2 even though it had a duty to do so. Genea failed to adequately respond to Plaintiffs' request  
3 for explanation of claims of infringement and wrongful impact on intellectual property.

4 234) Genea knew or should have known that its actions as described herein could cause the  
5 Plaintiffs to reduce their business activity related to the WSA technology platform with each  
6 other and to lose business with third parties as a direct and proximate result of Genea's  
7 demand to Plaintiff to "cease[] to market and sell WSA".

8 235) Genea knew or should have known that its refusal to withdraw its C & D Letter would  
9 continue to cause damage to the economic relationships between the Plaintiff and third  
10 parties. Genea could have foreseen that its actions as described herein could and did cause  
11 Plaintiff to stop selling and developing the WSA technology platform in order to avoid willful  
12 infringement, if any.

13 236) Genea, by making public accusations against Plaintiff for patent infringement, by  
14 sending the C & D Letter demanding that Plaintiff cease to use any technology that impacts  
15 Genea's technology, by failing to adequately respond to the Plaintiff's inquiries regarding the  
16 basis of claims of infringement, and by refusing to withdraw its C & D Letter after admitting  
17 that there was no infringement in the federal litigation in order to prevent Plaintiff from  
18 protecting themselves from willful infringement, violated one or more business duties  
19 imposed by the laws of the State of California or the laws of the United States.

21 237) After demanding that Plaintiff cease to market or sell WSA, it was foreseeable that  
22 Plaintiff would stop using, selling, and further developing the WSA technology platform,  
23 thereby interfering with potential and existing economic relations between the Plaintiff and  
24 other entities.

25 238) Genea, by failing to perform a claims infringement analysis before sending its C & D  
26 Letter and by refusing to provide information to Plaintiff upon their request regarding a  
27 description of infringing conduct, did negligently disrupt the contractual and prospective  
28 economic relationships Plaintiff has or had with third parties.

1 239) Genea's actions as recited herein were a substantial factor in causing Plaintiff harm.

2 240) As a direct and proximate result of the actions of Genea as described herein, Plaintiff  
3 has suffered, and continues to suffer after Genea's refusal to withdraw it C & D Letter,  
4 damage to its contractual and prospective economic relations with third parties in a sum  
5 according to proof but exceeding the jurisdictional limits of this court.

6 241) Genea's failure to provide a description of conduct that impacted its intellectual  
7 property or infringed on its '245 Patent was malicious because Genea intended to prevent  
8 Plaintiff from avoiding future willful infringement. Genea's failure to disclose the facts  
9 supporting its allegations of wrongful impact on its intellectual property and infringement on  
10 its '245 Patent were negligent because it knew or should have known that there was no  
11 wrongful impact or infringement on Genea's intellectual property or patents.

12 242) Genea's above recited action were oppressive because Genea did these actions with  
13 the intent of preventing Plaintiff from using WSA in its current or modified form to avoid  
14 willful infringement and to continue competing with Genea.

15 243) Genea's actions as recited herein were despicable because no reasonable person would  
16 deliberately prevent another person from, if necessary, modifying their conduct or products to  
17 avoid allegations of infringement and wrongful impact. These actions were so malicious,  
18 deceitful, and oppressive in preventing Plaintiff from exercising their rights to use and modify  
19 WSA so as to entitle Plaintiff to an award of punitive damages.

21 244) Genea, through their authorized agents Keith Voysey, Chief Technology Officer,  
22 David Balkin, position unknown, and Chris Taylor, position unknown, in Genea's C & D  
23 Letter, made or authorized the above-cited actions. The exact roles of these defendants are  
24 unknown, but when discovery is allowed to proceed, Plaintiff will amend this Complaint to  
25 be specific.

26 245) The last of the above-cited actions of Genea giving rise to negligent interference with  
27 economic relations causing damages to Plaintiff occurred within three (3) years of the filing  
28 of this Complaint and damages continue to accrue. The last of the above-cited actions of

1 Genea giving rise to negligent interference with economic relations occurred within three (3)  
 2 years of the filing of this Complaint and damages continue to accrue. Plaintiff's claims for  
 3 fraudulent misrepresentation under the UCL started to accrue when the last of the above-cited  
 4 actions by GENEVA causing damages to the Plaintiff occurred, *e.g.* GENEVA's refusal to  
 5 withdraw its C&D Letter in December 2013. This accrual occurs within four (4) years of the  
 6 filing of this Complaint and within the statute of limitations for UCL claims.

7 246) As recited herein, Genea's actions were and are malicious, deceitful, despicable, and  
 8 oppressive towards Plaintiff and were a direct and proximate cause of Plaintiff suffering  
 9 damages to prospective economic relationships with third parties in a sum according to proof  
 10 but exceeding the jurisdictional limits of this court.

11 247) As recited herein, Genea's actions were a substantial factor in causing harm to  
 12 Plaintiff and were a direct and proximate cause of Plaintiff suffering damages to the  
 13 prospective economic relationships with third parties in a sum according to proof but  
 14 exceeding the jurisdictional limits of this court.

15 **COUNT 8 --Unfair Competition Under California Business And**  
 16 **Professions Code § 17200.**

17 248) Plaintiff re-alleges and incorporates the allegations of the preceding paragraphs of this  
 18 Complaint as if fully set forth herein.

19 249) This cause of action is brought pursuant to Unfair Competition Law at **Business &**  
 20 **Professions Code [BPC] § 17200 *et seq.*** Genea's conduct constitutes unfair, unlawful  
 21 and/or fraudulent business practices within the meaning of **BPC** § 17200.

22 250) By way of a non-exhaustive example, GENEVA sent a broadly cease and desist letter  
 23 alleging infringement on a patent and other intellectual property but never identified in any  
 24 way any infringing conduct. Sending such a threatening letter is unfair because GENEVA  
 25 thereby required Plaintiff to respond by conducting an investigation of infringement on his  
 26 own, but then GENEVA failed and refused to cooperate by providing any information on its  
 27

1 allegations of infringement. Members of the public are likely to be deceived into thinking  
2 that GENEVA IP is infringed because GENEVA did not withdraw its C&D Letter.

3 251) Since GENEVA was in the exclusive possession of infringement information, and  
4 GENEVA bore the burden of establishing infringement, GENEVA's failure to conduct a claims  
5 infringement analysis or to provide any information on infringement to Plaintiff caused  
6 Plaintiff unnecessary harm and wasted effort. A reasonable jury could conclude that  
7 GENEVA's refusal to provide the results of a claims infringement analysis violated GENEVA's  
8 duties created by its C&D Letter and was unfair to Plaintiff.

9 252) In the final analysis, GENEVA's refusal to provide any claims infringement analysis  
10 deceived and continues to deceive members of the public since they could reasonably  
11 conclude that GENEVA's allegations of infringement are true. Members of the public are likely  
12 to be deceived by GENEVA's refusal to withdraw its C&D Letter, into thinking that there is  
13 some basis for GENEVA's allegations of infringement.

14 253) GENEVA sent a cease and desist letter to the Plaintiff claiming that WSA and his  
15 products infringed on Genea's 245 Patent and IP with no intention of suing Plaintiff for  
16 infringement on its intellectual property or enforcing the '245 Patent. A reasonable jury could  
17 conclude that sending a threatening cease and desist letter threatening litigation but then  
18 failing to follow through by alleging infringement when given the opportunity is unfair and  
19 fraudulent.

21 254) GENEVA unlawfully abused the judicial process by waiting to issue its covenant to not  
22 sue until the very last moment during the prior litigation. GENEVA did not learn anything  
23 during discovery in the First Federal Action that it did not already know from its SECRET  
24 INSPECTION in 2008 and its INTERNET INSPECTION in 2010. A reasonable jury could  
25 conclude that GENEVA unfairly waited to issue its covenant to not sue.

26 255) GENEVA violated duties to substantiate its claims of infringement by refusing to  
27 respond to Plaintiffs' inquiries about the specifics of Genea's allegations that WSA infringed  
28 on Genea's '245 Patent and Plaintiff's products infringed on GENEVA's IP. GENEVA violated

1 its duty to fully inform Plaintiff of conduct that infringed on its '245 Patent. By wrongfully  
2 refusing to provide infringement information in order to prevent Plaintiff from modifying  
3 WSA to avoid willful infringement, GENEVA acted unfairly.

4 256) Genea violated FRCP Rule 11 by sending its C&D Letter without first performing a  
5 claims infringement analysis or performing only an inadequate infringement analysis.  
6 GENEVA could have, but did not, seek information or an inspection of WSA from the Plaintiff  
7 or the developer of WSA. Thereafter, GENEVA promised, but ultimately failed to provide,  
8 Plaintiff with an explanation of its claims infringement. GENEVA forced Plaintiff to file an  
9 action for declaratory relief in federal court seeking a declaration that WSA did not infringe  
10 on Genea's '245 Patent. A reasonable jury could infer from this conduct that GENEVA abused  
11 the judicial process by all along intending to issue a covenant to not sue, but unfairly waited  
12 until the last minute.

13 257) Additionally, Genea violated the **FRCP** by sending its C&D Letter alleging  
14 infringement, but then not including any counterclaims in its answer in the federal lawsuit  
15 claiming that WSA infringed on Genea's '245 Patent.

16 258) GENEVA's conduct constituted fraudulent concealment because GENEVA concealed its  
17 clandestine inspection of WSA in 2008 under false pretenses in order to make it appear that  
18 Genea had no information about WSA.

19 259) GENEVA's '245 Patent is invalid since GENEVA violated the public policies of the  
20 Patent Laws and the rules for applying for a patent. GENEVA unlawfully failed to disclose  
21 WSA as prior art in its patent application at the USPTO, yet contradicted itself by later  
22 alleging infringement by WSA. GENEVA's is unlawfully asserting its '245 Patent because it is  
23 invalid because its claims are obvious in view of the teachings of WSA, in violation of 35  
24 **U.S.C. 1 et seq.**

25 260) After the federal litigation was completed, Genea refused to withdraw its C&D Letter  
26 after admitting in the federal litigation that its claims of infringement were false. By  
27 maintaining letter, GENEVA unlawfully continues its false allegations of infringement that

1 Genea knew or should have known were false. GENEVA failed to disclose the basis of its  
2 original allegations of infringement in its C&D Letter in order to preclude Plaintiff from  
3 seeking modifications to the WSA to avoid willful infringement of Genea's '245 Patent and  
4 continuing to infringe on GENEVA's IP. Members of the public who use or are familiar with  
5 building energy management systems are likely to be deceived as to the validity of GENEVA's  
6 '245 Patent and GENEVA's allegations that WSA infringes. A reasonable jury could conclude  
7 that GENEVA's refusal to withdraw its C&D Letter unfairly stifles competition.

8 261) GENEVA violated one or more duties imposed by the laws of the State of California  
9 and the United States by preventing the Plaintiffs from fulfilling their duties to avoid willful  
10 infringement by withholding infringement information.

11 262) The actions of Genea were subjectively in bad faith because Genea declined to seek to  
12 enforce its '245 Patent when given the opportunity in its answer in the federal litigation. By  
13 way of example, GENEVA has never sought to enforce the '245 Patent through counter claims  
14 in its answer or even file an amended answer containing such counter-claims. Moreover,  
15 GENEVA never sought to protect or enforce GENEVA's IP.

16 263) The actions of Genea were objectively in bad faith because Genea did not have  
17 reasonable grounds to allege infringement since Genea failed to conduct a claims  
18 infringement analysis before sending its C&D Letter. GENEVA had sufficient information  
19 from its SECRET INSPECTION of WSA in 2008 and its INTERNET INSPECTION in  
20 2010 to know that WSA did not infringe on Genea's '245 Patent and that Plaintiffs products  
21 and technologies did not wrongfully impact GENEVA's IP.

22 264) The above actions of Genea were oppressive and in bad faith because Genea made  
23 false allegations of infringement without any reasonable basis for alleging infringement on its  
24 '245 Patent and IP. By way of example, GENEVA failed to respond to or acknowledge  
25 Plaintiff's counter-assertion that WSA could not infringe on Genea's '245 Patent since the  
26 claims in the '245 Patent were based upon using user metered energy usage data, which  
27 information WSA does not use.

1 265) The above actions of Genea were unlawful and fraudulent because they are based on  
2 fraudulent misrepresentations which were made with the intent of interfering with the  
3 economic relations between Plaintiff, the WSA developer, and third parties.

4 266) The above actions of Genea were unlawful and in violation of duties of patentees to  
5 not make false or unsubstantiated allegations of patent infringement. Plaintiff was given no  
6 information about Genea's allegations of patent infringement and wrongful impact on  
7 GENEVA's IP. These allegations have not been withdrawn and continue to deter actual and  
8 potential clients of Plaintiff from using and buying WSA systems. GENEVA's actions have  
9 been unfair because Plaintiff was given no opportunity to demonstrate non-infringement due  
10 to GENEVA's refusal to provide any claims infringement analysis. Members of the public who  
11 are familiar with systems managing the energy use of buildings are likely to be deceived by  
12 GENEVA's actions and non-actions.

13 267) The above-cited actions of Genea are oppressive because Plaintiff cannot further  
14 develop WSA business to avoid infringing on Genea's 245 Patent because Genea never  
15 provided any information on how current versions of WSA infringe on Genea's '245 Patent  
16 or how Plaintiff's products or services infringed on GENEVA's IP. Yet Plaintiffs have had to  
17 spend years and much expense in countering GENEVA's patent trolling tactics.

18 268) The above actions of Genea anti-competitive because Genea gained customers,  
19 clients, and business which it would not have obtained without raising doubts about patent  
20 infringement on the '245 Patent and wrongful impact on GENEVA's IP. Such anti-competitive  
21 effects have not been ameliorated by Genea's covenant to not sue for patent infringement  
22 because Genea failed to withdraw its C&D Letter which actual and future clients and  
23 customers of Plaintiff can continue to rely upon and consider when deciding to not use WSA  
24 systems.

25 269) There is no business justification for the above-cited actions of Genea because there is  
26 no privilege for making false allegations in order to gain customers and market share. No  
27 reasonable person could believe that GENEVA's allegations of infringement were true because

1 GENEVA has refused to provide any specific facts backing up its claims of patent infringement  
2 and wrongful impact on GENEVA's IP. No reasonable person could believe that GENEVA's  
3 '245 Patent is valid after it failed to cite WSA as prior art in its patent application but then  
4 alleged infringement by WSA in its C&D Letter. Members of the public are likely to be  
5 deceived as to the validity of the '245 Patent.

6 270) The above actions of Genea are not authorized by law. By way of example,  
7 GENEVA's actions are not protected by the litigation privilege since they never intended to sue  
8 for infringement, and GENEVA's actions are not protected by the First Amendment since  
9 GENEVA never described any conduct by Plaintiff that infringed on the '245 Patent or  
10 GENEVA's IP.

11 271) The above actions of Genea are not privileged because Genea had no intention of  
12 enforcing Genea's '245 Patent and did not attempt to enforce this patent when given the  
13 opportunity to allege patent infringement in counter-claims in its original answer in the  
14 federal litigation. In addition, GENEVA did not file an amended answer asserting counter-  
15 claims for infringement.

16 272) A reasonable person would have discovered the factual basis of this UCL claim only  
17 when GENEVA issued its covenant-to-not-sue during December 2013, without however ever  
18 providing a claims infringement analysis or demonstrating that it had conducted one before  
19 sending the C&D Letter.

21 273) Plaintiff's claims for UCL started to accrue when the last of the above-cited actions by  
22 GENEVA causing damages to the Plaintiffs occurred, *e.g.* GENEVA's refusal to withdraw its  
23 C&D Letter in December 2013. This accrual occurs within four (4) years and within the  
24 statute of limitations for UCL claims. Damages continue to accrue.

25 274) As a direct and proximate result of Genea's actions as described herein, the Plaintiff  
26 suffered damages to its business reputation, intellectual property, and actual disruption to its  
27 prospective economic relations with other individuals and business entities in a sum  
28 according to proof but exceeding the jurisdictional limits of this court.

**COUNT 9 -- Trade Libel**

275) Plaintiff re-alleges and incorporates herein the allegations of the preceding paragraphs  
of this Complaint as if fully set forth herein.

276) Genea owed a duty to competitors and the Plaintiff to not make false allegations of  
wrongful impact on GENEVA's IP or infringement on its '245 Patent.

277) By way of a non-exhaustive example, GENEVA intentionally made statements in its  
C&D Letter which it intended to be published and the heard by third parties. Genea knew or  
should have known that its allegations that Plaintiffs products and technology, including  
WSA, wrongfully impacted Genea's patents and intellectual property would be  
communicated broadly within the close-knit industry in which the parties compete.

278) Once Genea made allegations of infringement on its '245 Patent and wrongful impact  
on its intellectual property, Genea owed a duty to Plaintiff to identify such infringement and  
wrongful impact in order that Plaintiff could avoid further infringement and impact, if any.  
Genea violated these duties by withholding information regarding its allegations of patent  
infringement and wrongful impact on GENEVA's IP.

279) Genea intentionally made false allegations which were eventually communicated to  
existing and potential customers of Plaintiffs that WSA infringed on Genea's '245 Patent and  
that Plaintiff's products and technology wrongfully impacted GENEVA's IP. Actual and  
potential customers of Plaintiff then avoided using WSA systems because of outstanding  
allegations of patent infringement and wrongful impact on GENEVA's IP.

280) Genea knew or should have known that its allegations were false since it had sufficient  
information from its SECRET INSPECTION in 2008 and its INTERNET INSPECTION in  
2010 to conclude that WSA did not infringe on Genea's '245 Patent and that the Plaintiffs'  
products and technologies did not wrongfully impact GENEVA's IP.

281) By failing to conduct a claims infringement analysis or seek information or an  
inspection from Plaintiff or WSA's developer before sending its C&D Letter, Genea  
recklessly disregarded the truth that there was no infringement and no wrongful impact on

1 GENEAE's IP. Genea acted despicably when it ignored Plaintiff's communication that WSA  
2 could not possibly infringe on its '245 Patent since WSA did not use metered energy usage  
3 data, a key component of the claims of the '245 Patent. No reasonable person would ignore  
4 such clear evidence of non-infringement and then refuse to withdraw its C&D Letter.

5 282) Genea's allegations of patent infringement and wrongful impact on GENEAE's IP have  
6 directly injured Plaintiffs in their profession, trade, and business and devalued the trademark  
7 WSA since Plaintiff has lost sales and opportunities to further develop WSA as a result of  
8 Genea's allegations. Genea's refusal to withdraw its C&D Letter continues to injure Plaintiff  
9 in their profession, trade, and business and continue to devalue WSA systems because actual  
10 and potential clients and customers do not want to become involved with systems using  
11 WSA.

12 283) The actions of Genea as described herein resulted in publication of Genea's  
13 allegations of wrongful impact on its intellectual property and infringement on its '245 Patent.  
14 Many clients and customers of Plaintiff have become aware of and acted upon Genea's  
15 allegations by stopping use of WSA systems and declining to use WSA equipment. Actual  
16 and potential clients of Plaintiff continue to refuse or decline to use WSA systems because  
17 Genea has refused to withdraw its C&D Letter.

18 284) Genea's allegations of infringement on its '245 Patent and wrongful impact on  
19 GENEAE's IP, which arose out of its C&D Letter as well as other conduct cited herein, are in  
20 fact false.

22 285) Genea's allegations of infringement were not privileged because Genea had no  
23 intention to sue to enforce its '245 Patent or to sue for infringement of GENEAE's IP. By way  
24 of a non-exhaustive example, GENEAE declined to assert patent infringement in any counter-  
25 claims in its answer in the Federal Litigation and also failed to file an amended answer  
26 containing counter-claims for patent infringement.

27 286) Genea's allegations of infringement, by natural consequence, caused damages to  
28 Plaintiff and the reputation of WSA, business, and technology platform by encouraging actual

1 and potential clients and customers of Plaintiffs to stop using WSA systems. Genea's refusal  
2 to withdraw its C&D Letter continues causing these damages and is despicable because no  
3 reasonable person would deliberately keep a cloud of infringement and wrongful impact  
4 allegations alive after admitting that there was no infringement.

5 287) Genea knew or should have recognized that someone else, besides the Plaintiff, might  
6 act in reliance upon Genea's allegations of patent infringement and wrongful impact on  
7 GENEVA's IP.

8 288) The publication of Genea's false statements continues today whenever clients and  
9 customers of Plaintiff learn about and rely upon Genea's claims of patent infringement and  
10 wrongful impact on GENEVA's IP. Such publication occurs frequently today since customers  
11 are reluctant to use WSA systems because of Genea's outstanding allegations of infringement  
12 and wrongful impact on GENEVA's IP.

13 289) Plaintiffs discovered the falsity of Genea's statements within two (2) years of filing  
14 this Complaint. A reasonable person would have learned about the falsity either when  
15 GENEVA provided a claims infringement analysis, which it never did, or when GENEVA issued  
16 a covenant to not sue, which however covered only allegations of infringement on the '245  
17 Patent.

18 290) Genea's above-cited actions were a substantial factor in causing harm to Plaintiff  
19 because without Genea's false statements staying alive, actual and potential clients and  
20 customers of Plaintiff would continue to buy and use WSA systems. By way of a non-  
21 exhaustive example, a customer of FULTON backed-out of a contract to buy and use WSA  
22 systems.

23 291) Genea's above-cited actions were malicious because Genea acted with intent to cause  
24 injury to Plaintiffs, *e.g.* by losing customers.

25 292) Genea's actions were despicable because no reasonable person would accuse someone  
26 of infringing on a patent without performing a claims infringement analysis and then refuse to  
27

1 give the accused infringer any information on how to avoid further willful infringement, if  
2 any.

3 293) Genea's actions were oppressive because Genea caused Plaintiff cruel and unjust  
4 hardship as a result of not explaining its allegations of patent infringement and wrongful  
5 impact on GENEVA's IP.

6 294) Genea's actions were fraudulent because it misrepresented that WSA infringed on  
7 Genea's '245 Patent and IP but then concealed information which Plaintiff could have used to  
8 demonstrate non-infringement.

9 295) As a result, Plaintiffs are entitled to an award of punitive damages.

10 296) Genea, through their authorized agents Keith Voysey, Chief Technology Officer,  
11 David Balkin, position unknown, and Chris Taylor, position unknown, in Genea's C & D  
12 Letter, made or authorized the above-cited actions. The exact roles of these defendants are  
13 unknown, but when discovery is allowed to proceed, Plaintiffs will amend this Complaint to  
14 be specific.

15 297) The last of the above-cited actions of Genea giving rise to trade libel and causing  
16 damages to Plaintiff occurred within two (2) years of the filing of this Complaint and  
17 damages continue to accrue. Plaintiff's claims for trade libel under the UCL started to accrue  
18 when the last of the above-cited actions by GENEVA causing damages to the Plaintiffs  
19 occurred, *e.g.* GENEVA's refusal to withdraw its C&D Letter in December 2013. This accrual  
20 occurs within four (4) years of the filing date of this Complaint and within the statute of  
21 limitations for UCL claims.

22 298) As recited herein, Genea's actions were and are malicious, deceitful, despicable, and  
23 oppressive towards Plaintiff and were a direct and proximate cause of Plaintiff suffering  
24 damages in the trade in a sum according to proof but exceeding the jurisdictional limits of this  
25 court, thereby entitling Plaintiff to punitive damages.

26 299) As recited herein, Genea's actions were a substantial factor in causing harm to the  
27 Plaintiffs and were a direct and proximate cause of the Plaintiffs suffering suffer damages to

1 the prospective economic relationships with third parties in a sum according to proof but  
2 exceeding the jurisdictional limits of this court.

3 **COUNT 10 -- Business Defamation**

4 300) Plaintiff re-alleges and incorporates the allegations of the preceding paragraphs of this  
5 Complaint as if fully set forth herein.

6 301) GENEVA intentionally made public allegations to an industry trade group that WSA  
7 infringed on its '245 Patent. By making such public statements, GENEVA misrepresented the  
8 nature, characteristics, qualities of Plaintiff's goods, services, and commercial activities.

9 302) By way of a non-exhaustive example, GENEVA intentionally alleged in a C&D Letter  
10 that WSA infringed on its '245 Patent and that Plaintiff's goods and services infringed on  
11 GENEVA's IP. By making such allegations to a competitor within a tightly-knit business  
12 community, GENEVA knew or should have known that its allegations of infringement would  
13 reach ears beyond those of Plaintiff.

14 303) GENEVA knew or should have known that said allegations and statements would  
15 become public knowledge. Through said statements, GENEVA misrepresented the nature,  
16 characteristics, qualities of Plaintiff's goods, services, and commercial activities.

17 304) As a direct and proximate result of false allegations of infringement on the '245 Patent  
18 and GENEVA's IP, GENEVA directly injured Plaintiff in his professions, trade, businesses, and  
19 tarnished systems using WSA. By way of example only, actual and potential customers of  
20 Plaintiff are now not willing to use WSA technology or they have withdrawn from  
21 commitments to use or consider WSA.

22 305) By making public accusations against Plaintiff for patent infringement and through  
23 sending the C&D Letter demanding that Plaintiff cease to use any technology that impacts  
24 GENEVA's IP, GENEVA defame Plaintiff in his business. Then, by failing to adequately  
25 respond to the Plaintiff's inquiries regarding GENEVA's claims of infringement, and by failing to  
26 withdraw its C&D Letter after admitting in the Federal Litigation that its claims of  
27

1 infringement were false, GENEVA continues to misrepresent the nature, characteristics,  
2 qualities of Plaintiff's goods, services, and commercial activities.

3 306) The actions of GENEVA as described herein resulted in publication of GENEVA's false  
4 allegations of infringement. By way of example, the allegations and statements made in the  
5 C&D Letter became known within the relevant industry, resulting in several clients of  
6 Plaintiff to refrain from using WSA systems.

7 307) Genea's allegations of infringement are defamatory of Plaintiff.

8 308) Genea's allegations of infringement are in fact false. However, Plaintiff could not  
9 allege the falsity of GENEVA's statements because Plaintiff had to first conduct an  
10 investigation. By way of example, Plaintiff requested a claims infringement analysis from  
11 GENEVA, but GENEVA never provided one. Plaintiff learned facts sufficient to allege  
12 misrepresentation, at the earliest, only when GENEVA covenanted to not sue for patent  
13 infringement in December, 2013.

14 309) Genea's allegations of infringement were not privileged. By way of example,  
15 GENEVA owed a duty to Plaintiff to conduct a claims infringement analysis to support  
16 GENEVA's allegations of infringement and provide at least some of the results to Plaintiff, but  
17 GENEVA failed or refused to do so.

18 310) Genea's allegations of infringement, by natural consequence, caused and continue to  
19 cause damages to Plaintiff's business and to the WSA technology platform and related  
20 business.

21 311) Plaintiff suffered harm from the actions of Genea as cited above within the past three  
22 (2) years from the filing date of this Complaint and the damages continue to accrue.  
23 Plaintiff's claims for business defamation started to accrue when the last of the above-cited  
24 actions by GENEVA causing damages to the Plaintiffs occurred, *e.g.* GENEVA's refusal to  
25 withdraw its C&D Letter in December 2013. This accrual occurs within four (4) years of  
26 filing this Complaint and within the statute of limitations for UCL claims. Damages continue  
27 to accrue.  
28

1       312) As a direct and proximate result of Genea's actions as described herein, Plaintiff  
2       suffered damages to its trademark, intellectual property, and actual disruption to its business  
3       and prospective economic relations with individuals and business entities in a sum according  
4       to proof but exceeding the jurisdictional limits of this court.

5       **COUNT 11 -- Declaratory Judgment of Non-Infringement on the '245**  
6       **Patent.**

7       313) Plaintiff re-alleges and incorporates the allegations of the preceding paragraphs of this  
8       Complaint as if fully set forth herein.

9       314) As a result of the unsettled state of affairs left by Genea's mere covenant to not sue for  
10      present versions of WSA, Plaintiff continue to suffer business losses due to Genea's conduct.  
11      By way of example, Plaintiff was not put as good a position as he was before GENE A sent its  
12      C&D Letter.

13      315) An actual controversy arose and continues to exist between Plaintiff and Defendants  
14      concerning their respective rights and duties in that Plaintiff contends that the Defendants'  
15      covenant to not sue for present versions of WSA does not restore Plaintiff to as good a  
16      position as he was before Defendants sent a cease and desist letter, whereas Defendants  
17      dispute these contentions and contends that merely promising to not sue for infringement for  
18      present versions of WSA is by itself not harmful to Plaintiff.

19      316) There is a real, immediate, substantial, and justiciable controversy between the  
20      Plaintiff and Defendants concerning whether GENE A's refusal to withdraw its C&D Letter is  
21      sufficient to dispel GENE A's previous unsubstantiated allegations of infringement and refusal  
22      to provide a claims infringement analysis.

23      317) Plaintiff is unable to determine which conduct or products induced GENE A to make  
24      allegations of infringement on its '245 Patent and GENE A's IP.

25      318) Plaintiffs desire a judicial determination of the rights and duties of the parties so that  
26      Plaintiff may resume business as conducted before GENE A made unsubstantiated and  
27      unwithdrawn allegations of infringement on GENE A's IP.

1 319) Plaintiffs desire the following judicial declarations:

2 320) That WSA does not infringe on Genea's '245 Patent;

3 321) That future versions of WSA cannot infringe on Genea's '245 Patent;

4 322) That none of the products and technologies of the Plaintiffs wrongfully infringe on any  
5 of GENEVA's IP;

6 323) That there are continuing financial burdens caused by Genea's C&D Letter and  
7 GENEVA's refusal to withdraw it;

8 324) That the conduct of Genea prevented Plaintiff from using, selling, or further  
9 developing business and systems using WSA technology;

10 325) That the conduct of Genea was unfair, oppressive, and malicious.

11 326) That Genea's conduct interfered with the economic relations between the Plaintiff and  
12 third parties;

13 327) That Genea and the Plaintiff entered into an implied contract for the sale of  
14 FULTON's WSA business and associated systems to GENEVA a fair market value;

15 328) That Genea's covenant to not sue does not eliminate the deleterious effects of Genea's  
16 allegations of patent infringement and wrongful impact on GENEVA's IP.

17 329) That one or more of Genea's claims in its '245 Patent are invalid and unenforceable.

18 330) Other judicial declarations deemed necessary as this case progresses.

19 331) A judicial declaration is necessary and appropriate at this time under the circumstances  
20 in order that Plaintiff may ascertain their rights and duties, obtain compensation for WSA and  
21 associated businesses, and resume business as usual using WSA without allegations of  
22 infringement, if possible.

24 **COUNT 12 -- Declaratory Judgment That the Claims of GENEVA's '245**  
25 **Patent Are Not Patentable Under 35 U.S.C. 101 Because They Contain**  
26 **Matter Not Eligible For Patent Protection.**

27 234) Plaintiff re-alleges and incorporates the allegations of the preceding paragraphs of this  
Complaint as if fully set forth herein.

1 235) In order for subject matter to be patentable, it must be eligible. By way of a non-  
2 exclusive example, the software methods of GENEA's '245 Patent are not eligible for patent  
3 protection because they contain well-known accounting ideas, mental processes, and abstract  
4 intellectual concepts.

5 236) An actual controversy has arisen and now exists between Plaintiff and Defendants  
6 concerning their respective rights and duties in that Plaintiff contends that GENEA's '245  
7 Patent covers unpatentable software methods, whereas Defendants maintain the validity of the  
8 '245 Patent.

9 237) There is a real, immediate, substantial, and justiciable controversy between the  
10 Plaintiff and Defendants concerning whether the claims of Genea's '245 Patent include any  
11 new and useful process, machine, or manufacture which is patentable under 35 U.S.C. §101.

12 238) Plaintiff is entitled to a judicial declaration that one or more claims of Genea's '245  
13 Patent constitute ineligible matter for patents.

14 239) Plaintiffs desire a judicial determination of the rights and duties of the parties  
15 regarding the eligibility of the claims of the '245 Patent for patentability.

16 240) A judicial declaration is necessary and appropriate at this time under the circumstances  
17 in order that Plaintiff may ascertain his rights and duties and eventually obtain compensation  
18 for losses due to GENEA's asserting an invalid patent.

19

**COUNT 13 -- Declaratory Judgment That the Claims of GENEA's '245**  
**Patent Are Not Patentable Under 35 U.S.C. 102 Because They Constitute**  
**Prior Art and Lack Novelty.**

20 241) Plaintiff re-alleges and incorporates the allegations of the preceding paragraphs of this  
21 Complaint as if fully set forth herein.

22 242) In order for a claimed invention to attain and keep the status of an issued patent, the  
23 claim must be novel. An invention is not novel if it is known within the prior art or if, to a  
24 person of ordinary skill and knowledge in the art, it is obvious.

25 243) By way of a non-exhaustive example, the WSA technology was known to GENEA  
26 while its application was pending at the USPTO. WSA is so similar to the claims of the '245

1 Patent that GENE A sent a C&D Letter alleging infringement without even requesting an  
2 opportunity to inspect from Plaintiff. A person of ordinary skill and knowledge in the art who  
3 knows of WSA would deem that the claims of the '245 Patent are obvious and lack novelty.

4 244) An actual controversy has arisen and now exists between Plaintiff and Defendants  
5 concerning their respective rights and duties in that Plaintiff contends that GENE A's '245  
6 Patent covers an invention already in public use and used in WSA, including prior art known  
7 to GENE A at the time of its patent application, whereas Defendants maintain the validity of  
8 the '245 Patent and the novelty of its claims.

9 245) Plaintiff maintains that GENE A did not invent all of the claims of the '245 Patent  
10 because the functionality of the claims is covered by the functionality of WSA and other prior  
11 art, whereas GENE A maintains that it is the sole inventor or assignee from the sole inventor.

12 246) There is a real, immediate, substantial, and justiciable controversy between the  
13 Plaintiff and Defendants concerning whether the claims of Genea's '245 Patent include any  
14 new and useful process, machine, or manufacture which is patentable under 35 U.S.C. §102.

15 247) Plaintiff is entitled to a judicial declaration that one or more claims of Genea's '245  
16 Patent constitute prior art and lack novelty.

17 248) Plaintiffs desire a judicial determination of the rights and duties of the parties  
18 regarding the eligibility of the claims of the '245 Patent for patentability.

19 249) A judicial declaration is necessary and appropriate at this time under the circumstances  
20 in order that Plaintiff may ascertain his rights and duties and obtain compensation for losses  
21 due to GENE A's asserting an invalid patent and resume business as usual using WSA.

22  
23 **COUNT 14 -- Declaratory Judgment That the Claims of GENE A's '245**  
24 **Patent Are Not Patentable Under 35 U.S.C. 103 Because They Are**  
25 **Obvious.**

26 250) Plaintiff re-alleges and incorporates the allegations of the preceding paragraphs of this  
27 Complaint as if fully set forth herein.  
28

1 251) In order for a claimed invention to attain and keep the status of an issued patent, the  
2 claim must not be obvious to one possessing ordinary skill in the art, at the time the invention  
3 was created.

4 252) By way of a non-exhaustive example, the WSA technology was known to GENEVA  
5 while its application was pending at the USPTO. WSA is so similar to the claims of the '245  
6 Patent that GENEVA sent a C&D Letter alleging infringement without even requesting an  
7 opportunity to inspect from Plaintiff. WSA makes the claims of the '245 Patent obvious to  
8 one of ordinary skill in the software arts.

9 253) An actual controversy has arisen and now exists between Plaintiff and Defendants  
10 concerning their respective rights and duties in that Plaintiff contends that GENEVA's '245  
11 Patent covers obvious subject matter which as a whole would have been obvious before the  
12 effective filing dates of the claimed invention to a person having ordinary skill in the art,  
13 whereas Defendants maintain the non-obviousness of the claims of the '245 Patent.

14 254) Plaintiff maintains that the claimed invention disclosed in the claims of the '245 Patent  
15 was obvious given that GENEVA had already inspected WSA before or during GENEVA's  
16 patent application at the USPTO, *i.e.* during its SECRET INSPECTION and INTERNET  
17 INSPECTION.

18 255) The differences between WSA and other prior art and the claims of the '245 Patent are  
19 such that the subject matter of the patent would have been obvious at the time of the invention  
20 to a person having ordinary skill in the art. By way of illustration, if GENEVA knew of the  
21 functionality of WSA through its two prior inspections and the information freely available on  
22 the Internet, and that functionality infringed on GENEVA's '245 Patent, then obviously WSA  
23 makes the claims of GENEVA's '245 Patent obvious.

24 256) There is a real, immediate, substantial, and justiciable controversy between the  
25 Plaintiff and Defendants concerning whether the claims of Geneva's '245 Patent are obvious  
26 and patentable under 35 U.S.C. §103.  
27  
28

1 257) Plaintiff is entitled to a judicial declaration that one or more claims of Genea's '245  
2 Patent are obvious in view of the prior art, including but not limited to WSA.

3 258) A judicial declaration is necessary and appropriate at this time under the circumstances  
4 in order that Plaintiff may ascertain his rights and duties and eventually obtain compensation  
5 for losses due to GENEVA's asserting a patent covering obvious claims.

6 **COUNT 15 -- Declaratory Judgment That the Claims of GENEVA's '245**  
7 **Patent Contain Subject Matter That is Not Patentable Under 35 U.S.C.**  
8 **112(a) Because of a Lack of Enablement.**

9 259) Plaintiff re-alleges and incorporates the allegations of the preceding paragraphs of this  
10 Complaint as if fully set forth herein.

11 260) The Specification of a patent must describe how to make and use the claimed  
12 invention. If the Specification does not describe how to make and use the invention, then the  
13 claimed invention is not enabled and is thereby invalid.

14 261) By way of one non-exclusive example, the Specification for the '245 Patent does not  
15 define the term or words user metered energy usage data. Yet the claims of the '245 Patent  
16 use this term and these words. Hence, the '245 Patent is not enabled by the Specification.

17 262) An actual controversy has arisen and now exists between Plaintiff and Defendants  
18 concerning their respective rights and duties in that Plaintiff contends that the specification of  
19 GENEVA's '245 does not describe how to make and use the claimed invention, whereas  
20 Defendants maintain that the '245 Patent is enabled.

21 263) There is a real, immediate, substantial, and justiciable controversy between the  
22 Plaintiff and Defendants concerning whether the claims of Genea's '245 Patent are enabled  
23 under 35 U.S.C. §112(a). By way of example only, the '245 Patent uses phrases including  
24 user metered energy usage data, but the specification lacks any definition of this or similar  
25 term.

26 264) Plaintiff is entitled to a judicial declaration that one or more claims of Genea's '245  
27 Patent is not enabled. By way of example only, Plaintiff inquired of John Guist whether the  
28

specification included a definition of metered user energy usage data, and Mr. Guist replied that such a definition was not necessary.

265) A judicial declaration is necessary and appropriate at this time under the circumstances in order that Plaintiff may ascertain his rights and duties and eventually obtain compensation for losses due to GENEVA's asserting a patent which is invalid due to a lack of enablement.

**COUNT 16 -- Declaratory Judgment That the Claims of GENEVA's '245 Patent Are Invalid and Unenforceable Due to GENEVA's Failure to Disclose WSA As Prior Art in its Application at the USPTO.**

266) Plaintiff re-alleges and incorporates the allegations of the preceding paragraphs of this Complaint as if fully set forth herein.

267) Applicants for a patent have a duty to cite or inform the USPTO of all relevant prior art while an application for a patent is pending. By way of one example, if a system infringes on a claim of a patent, then it must necessarily be prior art.

268) GENEVA knew about the WSA technology by 2008 at the latest through its SECRET INSPECTION. GENEVA learned further about WSA through its INTERNET INSPECTION in or around 2010. GENEVA knew or should have known about WSA since that product's software and webpages are freely available on the Internet.

269) WSA is prior art to the claims of the '245 Patent because GENEVA cited WSA as infringing on GENEVA's '245 Patent in its C&D Letter.

270) GENEVA did not cite WSA as prior art in its application for the '245 Patent at the USPTO. GENEVA knew about WSA while its application was pending.

271) An actual controversy has arisen and now exists between Plaintiff and Defendants concerning their respective rights and duties in that Plaintiff contends that GENEVA committed fraud on the USPTO by failing to disclose the WSA technology platform as prior art in its application for the '245 Patent, whereas Defendants maintain that the WSA platform is not prior art and that GENEVA's '245 Patent is valid.

272) There is a real, immediate, substantial, and justiciable controversy between the Plaintiff and Defendants concerning whether the claims of GENEVA's '245 Patent are

1 anticipated by the WSA platform. There is a similarly urgent controversy over whether  
2 GENE A was obligated to disclose WSA in its patent application.

3 273) Plaintiff is entitled to a judicial declaration that the WSA platform is prior art to the  
4 '245 Patent and that GENE A was obligated to disclose or cite WSA as prior art in its patent  
5 application. As result of failing to disclose relevant prior art which GENE A knew about,  
6 GENE A's '245 Patent is invalid and unenforceable.

7 274) A judicial declaration is necessary and appropriate at this time under the circumstances  
8 in order that Plaintiff may ascertain his rights and duties and eventually obtain compensation  
9 for losses due to GENE A's asserting a patent which is invalid due to fraud on the USPTO.

10 **COUNT 17 -- Declaratory Judgment of Non-Infringement on GENE A's**  
11 **Other Intellectual Property.**

12 280) Plaintiff re-alleges and incorporates the allegations of the preceding paragraphs of this  
13 Complaint as if fully set forth herein.

14 281) An actual controversy has arisen and now exists between Plaintiffs and Defendants  
15 concerning their respective rights and duties in that Plaintiffs contend that the Defendants'  
16 covenant to not sue for present versions of WSA does not restore Plaintiff to as good a  
17 position as they were in before Defendants sent a cease and desist letter to Plaintiff, whereas  
18 Defendants dispute these contentions and contends that merely promising to not sue for  
19 infringement on its '245 Patent does not alleviate GENE A's demands that FULTON cease  
20 infringing on GENE A's other intellectual property.

21 282) There is a real, immediate, substantial, and justiciable controversy between the  
22 Plaintiff and Defendants concerning whether FULTON infringes on any of GENE A's IP.

23 283) Plaintiff is entitled to a judicial declaration that FULTON does not infringe and has  
24 not infringed on GENE A's IP so that he can resume business as usual.

25 284) A judicial declaration is necessary and appropriate at this time under the circumstances  
26 in order that FULTON may ascertain his rights and duties and eventually obtain  
27 compensation for loss of business related to using WSA and associated businesses.

1 285) As a result of the unsettled state of affairs left by Genea's mere covenant to not sue for  
2 present versions of WSA, FULTON continues to suffer business losses due to Genea's  
3 remaining allegations of infringement on GENEVA's IP.

4 **WHEREFORE**, Plaintiff pray for judgment against Defendants, and each of them, as  
5 follows: For a declaration that Genea's failure to withdraw its C&D Letter is wrongful. For  
6 such other and further relief as the court deems proper.

7

8 **PRAYER FOR RELIEF**

9 **WHEREFORE**, Plaintiffs pray for the following relief:

10 • For compensatory damages as allowed by law;  
11 • For punitive damages allowed by law;  
12 • For restitution and/or disgorgement;  
13 • That Genea be ordered to pay all costs and expenses associated with this action;  
14 • That Genea be ordered to pay the attorneys' fees reasonably incurred by the Plaintiffs;  
15 • That Genea be made pay damages to Plaintiff for conversion of their WSA platform  
16 valued at its highest fair market value;  
17 • That Genea be made to pay damages for trespassing on Plaintiff's WSA systems  
18 under Plaintiff's control and business;  
19 • That Genea be made pay damages to Plaintiff according to unjust enrichment and  
20 quantum meruit, in an amount according to proof;  
21 • That a constructive trust be imposed on Genea for its ill-gotten gains;  
22 • That Genea be made pay damages to Plaintiff for lost present and future business due  
23 to intentional and negligent interference with economic relations with third parties, in a  
24 sum according to proof;  
25 • That Genea be made pay restitution for ill-gotten gains in a sum according to proof;  
26 • That this is an exceptional case in favor of Plaintiffs and awarding attorneys' fees  
27 pursuant to 35 U.S.C. Section 285; and

- That additional orders and other relief be granted as the Court deems just and proper.

## **DEMAND FOR JURY TRIAL**

Plaintiffs hereby request a jury trial on any and all claims triable by a jury.

Dated this January 8, 2016

By:

\_\_\_\_/s/gregoryrichardsonsesq\_\_\_\_

Gregory Richardson, Esq.

# LAW OFFICES OF GREGORY RICHARDSON